

From: [Jason Lee](#)
To: [*TE/GE-EO-F990-Revision;](#)
CC:
Subject: re: AFP comments on Form 990 redesign
Date: Friday, September 14, 2007 5:08:02 PM
Attachments: [Comments for AFP on Redesigned Form 990 9-14-07.doc](#)
[Coalition Comments 9-14-07.doc](#)

Dear Sir or Madam:

Attached are the Association of Fundraising Professionals' comments on the Form 990 redesign (as well as a second attached document referenced in our comments).

In addition, here are links to two supplemental documents that also are referenced in our submission.

http://www.afpnet.org/content_documents/CodeofEthics.pdf

http://www.afpnet.org/content_documents/Donor_Bill_of_Rights_-_English.pdf

Thank you. Please let us know if you have any questions or need any additional information.

-Jason Lee

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September 14, 2007

Ms. Lois G. Lerner
Director of the Exempt Organizations Division of the
Internal Revenue Service

Mr. Ronald J. Schultz
Senior Technical Advisor to the Commissioner of
Tax Exempt and Government Entities Division

Internal Revenue Service
Form 990 Redesign
ATTN: SE:T:EO
1111 Constitution Ave., N.W.
Washington, DC 20224

RE: Comments on the Redesigned Form 990

Dear Ms. Lerner and Mr. Schultz:

The Association of Fundraising Professionals (AFP), on behalf of its members and chapters nationwide, welcomes the opportunity to comment on the commendable effort of the Internal Revenue Service to improve and modernize the IRS Form 990 information return. Our comments are meant to be constructive and to offer the view of those involved in the operation and management of nonprofit organizations on a daily basis.

AFP represents nearly 28,000 members in more than 190 chapters throughout the world, working to advance philanthropy through advocacy, research, education and certification programs. AFP members work for a wide variety of charities, from large multi-national institutions to small, grassroots organizations, engaged in countless missions and causes including education, healthcare, research, the environment and social services, to name a few. In 1960, four forward-thinking and prominent fundraisers met with the goal of creating an association, now AFP, that would promote good stewardship, donor trust, and ethical and effective fundraising.

AFP members are required annually to sign our *Code of Ethical Principles and Standards of Professional Practice*, which were first developed in 1964. A copy of the code is attached. AFP instituted a credentialing process in 1981 – the CFRE, or Certified Fund Raising Executive designation—to aid in identifying for the giving public fundraisers who possess the demonstrated knowledge and skills necessary to perform their duties in an effective, conscientious, ethical, and professional manner. This was followed in 1990 by the ACFRE for advanced fundraisers. We also have a strong ethics enforcement policy that can result in the revocation of credentials and expulsion of members who engage in prohibited behavior.

This background is cited to emphasize the importance that AFP and its members place on ethical fundraising. Much of our work is spent educating and training our members and the public in ethical fundraising practices while working with federal and state regulators to improve regulation and to identify wrongdoers who don't belong in the charitable sector.

In addition, since its founding, AFP has championed donor rights. AFP was the driving force behind the creation of the *Donor Bill of Rights* and provides information to potential donors about how to select, evaluate, and give wisely to charities. AFP encourages all donors and nonprofit volunteers to investigate and become engaged with charities of their choice before making financial commitments. A copy of the *Donor Bill of Rights* is attached.

I. Statement of Significant Concerns

The overriding issue in the redesign of the Form 990 is whether the purpose of the Form is to provide the IRS with financial information about the activities of 501(c) organizations, or whether it is to function as a public information and research or general disclosure document. Perhaps it is intended for all of these things. The redesigned form, in addition to its traditional function as a financial information report, proposes to educate its filers on not clearly articulated IRS notions of best practices and to provide simplistic, and, to some extent, subjective, information on the efficiency and, by implication, the effectiveness of nonprofit filers.

Unfortunately, as with most things that try to be all things to all people, the result is quite often an effort that never quite achieves its lofty goals. There is some concern that the redesign of the Form 990 will place a significant administrative burden on nonprofits, particularly the smaller charities that have limited staff and resources. The additional requirements may have the unintended effect of diverting vital dollars away from the charities' philanthropic missions.

Given the potential impacts that the redesigned Form could have on charities, AFP urges the Service to consider extending the deadline for comments to allow more exempt organizations to weigh in on this important effort. In the alternative, perhaps the Service could lengthen the implementation phase to allow the charitable sector to better prepare for the new requirements.

In addition, AFP is concerned that the new 990 might delve into areas that extend beyond the true scope of the form. For instance, requiring information regarding governance practices seems inappropriate for this form. The questions on the redesigned Form also suggest certain practices that both the charitable sector and the IRS ultimately find impractical. Furthermore, it would appear that governance information might fall outside the statutory authority of the IRS.

Another basic problem may lie in the fact that the Form 990 was designed to be essentially a statistical report. As Mark Twain noted when quoting Benjamin Disraeli, “[t]here are three kinds of lies: Lies, Damn Lies and Statistics.” As a public education and disclosure vehicle, the Form 990 is handicapped by its own language. Numbers cannot tell the whole story. Facts are stubborn things, but statistics are more pliable.

With these limitations in mind, AFP believes that the strong reliance on the use of percentages throughout the proposed new form, but particularly on the first page of the Core Form, presents a significant problem. As a public disclosure document, the likelihood that there will be widespread reliance on the Summary contained in Part I on page one is virtually certain. Therein lies the concern.

The Service appears to be reinforcing the flawed but popular notion that percentages, especially those related to fundraising and compensation, are worthwhile indicators of an organization’s intrinsic worth and effectiveness. Yet statistics are no substitute for the truth. The presence within a given charity of a high percentage of fundraising costs does not necessarily equate to a lack of efficiency or effectiveness. This paradigm was recognized by the United States Supreme Court in its 1984 decision in *Secretary of State of Maryland v. Joseph H. Munson Company, Inc.*, 467 U.S. 947, 961 (1984) wherein the Court stated:

[T]here is no necessary connection between fraud and high solicitation and administrative costs. A number of other factors may result in high costs; the most important of these is that charities often are combining solicitation with dissemination of information, discussion, and advocacy of public issues, an activity clearly protected by the First Amendment

Four years later, the Supreme Court again recognized this important consideration in overturning a state law seeking to limit fundraising costs and require disclosure of percentage information:

[A] solicitation may be designed to sacrifice short-term gains in order to achieve long-term, collateral, or noncash benefits. To illustrate, a charity may choose to engage in the advocacy or dissemination of information during a solicitation, or may seek the introduction of the charity's officers to the philanthropic community during a special event (*e.g.*, an awards dinner). *Riley v. National Federation*

of the Blind of North Carolina, Inc., 487 U.S. 781, 791-92
(1988)

Despite the Supreme Court's acknowledgment of the inevitability of fundraising expenses, the public at large viewing the statistical information presented on the cover page of the Form 990 is not likely to make this critical distinction. Assumptions will be made and conclusions drawn - all without the opportunity for the organization in question to be heard. Once again, undifferentiated data will prevail. Yet abstract statistics are no substitute for judgment.

The emphasis on compensation information as a percentage of program expenditures prominently displayed on page one of the Core Form, without appropriate context, creates a similar problem. Organizations that rely heavily on highly compensated individuals to perform program services demanding a significant level of skill or experience will appear less effective than organizations that focus on funding programs performed by other organizations or non-employees. Apples will be compared to oranges. More importantly, the public may miscomprehend the information in a negative way, resulting in sensationalism that could turn the public away from good charities.

The new Form 990 also seeks to disclose whether organizations are using IRS notions of best practices with respect to the implementation of internal policies and practices. AFP strongly supports the concept that nonprofit organizations should seek to operate in the most ethical, accountable and transparent manner possible. AFP has its own member Code of Ethics and educates and encourages nonprofit executives to employ practices that advance transparency, good governance and ethical behavior. The AFP Code of Ethics is the only enforced code in existence in fundraising.

AFP has learned from experience that best practices are not static - they evolve. Arbitrary formulas which lead to abstract calculations are not a substitute for an understanding of the actual operations of any organization in the nonprofit sector. AFP encourages all potential donors to investigate and become involved with any charity which they are interested in supporting. The public can not possibly determine from a simplistic statement of numbers whether a charity is engaging in the best practices necessary to effectively serve the stakeholders in the organization.

The truly best practices can often be emerging practices. The Form 990 is not meant to be a dynamic document. What may be considered a best practice today may be considered antiquated and ineffective tomorrow. There are at least three important questions that need to be answered in assessing the use of best practices in the Form 990: (1) Whose notion of best practices are these, (2) Are they applicable to all filers in the same manner, and (3) Can rigid calculations render meaningful comparative data?

Below is a specific list of comments, both positive and critical, set out by Form, Part, and Line item.

II. Specific Comments on the Core Form

- a. **Heading Block – Accounting Method:** Organizations required by state law to perform a certified audit should also be required to report information on the Form 990 on an accrual accounting basis. This will avoid inconsistencies with the information reported in the audit (which must be performed on accrual basis in accordance with GAAP). The audit reconciliation contained in Schedule D, Parts XIV and XV will in most cases not alleviate the apparent inconsistency contained in the Core Form.
- b. **Heading Block – Addition of Organizational Form:** AFP recommends that the organizational form be listed (e.g., corporation, charitable trust, limited liability company, unincorporated nonprofit association), in addition to the information currently listed (e.g., state of legal domicile and year of formation). There are legal implications that arise from the organizational form, and, therefore, this would be a useful additional disclosure.
- c. **Part I (Summary), Lines 6 and 7 (Compensation):** Information regarding the number of individuals receiving compensation in excess of \$100,000 (Line 6), without an explanation of their respective job responsibilities, does not provide the reader with useful information about the organization, and is not the kind of information that AFP believes the public is most interested in seeing on this critical summary page. Similarly, disclosure of the highest compensation amount reported (Line 7) does not provide meaningful information without context concerning the individual's job responsibilities and degree of critical importance to the organization's performance.
- d. **Part I (Summary), Lines 8a and 8b (Program-Allocated Compensation):** Disclosure of the program-allocated compensation of key charity officials as a percentage of total program expenses is a misleading percentage calculation that does not take into account the different types of exempt organizations that exist and their necessarily differing structures and operational models. For example, an organization whose primary program service is carried out by a small number of employees will undoubtedly show a high percentage, whereas an organization that relies more on volunteer assistance or other organizations and individuals to carry out its program mission will likely show a low percentage. The resulting percentage does not tell the public any truly meaningful information about the effectiveness and efficiency of an organization.
- e. **Part I (Summary), Lines 9a and 9b (Unrelated Business Revenue):** Information on the gross and net unrelated business revenue is not critical information that should be placed in the summary page, particularly without any corresponding information as to the sources of revenue.

- f. **Part I (Summary), Line 10 (Disposal of more than 25% of assets):** Most public charities dispose of more than 25% of their assets annually in the normal course of operation. If this disclosure (and Schedule N) is intended to apply only to single large transactions that dispose of more than 25% of the organization's assets, it is not clear from the Form or Instructions, and should be clarified.
- g. **Part I (Summary), Line 19b (Fundraising expenses as a percentage of total contributions):** This percentage calculation gives the public a misleading impression that the organization's efficiency and effectiveness should be judged based on a percentage calculation. In their 2004 *Special Issues in Nonprofit Financial Reporting* policy brief, the Urban Institute's Center on Nonprofits and Philanthropy and the Center on Philanthropy at Indiana University noted that:

[t]wo common financial indicators are the program-spending ratio and the fundraising-efficiency ratio. The program-spending ratio is calculated by dividing total program expenses by total expenses. The fundraising efficiency ratio is calculated by dividing fundraising costs by total contributions.

Such ratios are only as good as the numbers used to calculate them. Unfortunately, research shows that in many cases the numbers are not good at all, and that practices vary so widely that comparisons among organizations may lead to flawed conclusions.

Yet, inevitably, the public will rely on these percentages to determine an organization's quality. While there are certain "watchdog" organizations that evaluate charities using similar financial indicators, thoughtful methodologies do not look at these numbers in isolation, but either evaluate charities on a broad set of factors, or allow charities to explain the numbers. Because there are so many factors that can affect these percentages, AFP does not think the IRS, as a regulatory enforcement body, should encourage the public to make evaluations based on potentially misleading efficiency indicators. It is important to note that one of AFP's primary objectives is to promote high ethical standards in the fundraising profession, and AFP fully supports efficient and effective fundraising. However, the experience of our broad constituency has taught us that percentage calculations do not tell the whole story. For example, the first year of a multi-year capital campaign will likely reflect a high percentage of fundraising expenses, whereas receipt of a large bequest in a particular year could cause the fundraising percentage to be very low, even though the bequest may have been the result of extensive efforts in prior years. Inclusion of such percentages is very likely to distort and harm public perception of organizations doing positive work for society.

- h. **Part I (Summary), Line 24(b) (Total expenses as a percentage of net assets):** This percentage, which is not contained in the prior Form 990, unfairly characterizes organizations that have a large asset base as possibly ineffective or bloated. In many cases, moneys may have been retained for large capital or other program-related projects. AFP therefore recommends that this line be eliminated.
- i. **Part I (Summary), Lines 25 and 26 (Gaming and Fundraising):** Listing fundraising figures at the bottom of the summary page is more confusing than helpful, and by isolating them in this way, it creates a negative perception of fundraising, despite its critical role in both the public advocacy efforts and continued existence of almost all charities. AFP believes these lines should be altogether removed. The percentage calculations in column (iv) create misleading inferences about the effectiveness of an organization without any context, e.g., they fail to recognize the various potential underlying goals being carried out, or attempts at testing out new fundraising techniques. Placement of these percentages so prominently on page 1 of the Core Form could unfairly characterize an organization as inefficient even if the actual dollar amounts involved represent only a small portion of the finances of the organization as a whole.
- j. **Part II (Compensation) - Placement:** The IRS has made it apparent that executive compensation is a critical government and public disclosure issue through its placement of this information on pages 1 and 2 of the Core Form. Although AFP agrees that compensation is an important issue, we question whether it is more important than the organization's overall financial information in Parts IV (Statement of Revenue), V (Statement of Functional Expense) and VI (Balance Sheet). AFP also believes that Part IX (Program Service Accomplishments) defines the core of an organization's activities, and should immediately follow the summary in Part I. Moreover, the recitation of compensation does not account for such factors as the organization's location (e.g., urban or rural) or industry (e.g., medical services), which could have a significant impact on the compensation. In fact, this compensation disclosure requirement, listed without proper context, could trigger inadvertent and unnecessary skepticism or, worse, outcry from the public.
- k. **Part II (Compensation) – Threshold:** AFP supports the change in the reporting threshold from \$50,000 to \$100,000 for highest compensated employees other than the CEO, CFO, and other key employees. This amount better reflects the reality of nonprofit compensation practices since the initial threshold was instituted.
- l. **Part III (Governance) – Best Practices:** Although AFP strongly supports widely held notions of best practices, and in fact, has established its own enforced Code of Ethics for its own membership, it does not

believe the Form 990 is the appropriate place to instruct charities on them. Again, it appears that the IRS does not have the statutory authority to ask for governance-related information or recommend governance practices. As for the Part III of the Core Form itself, this section asks questions that suggest that all charities should have certain policies in place. However, small organizations may feel compelled to use their scarce resources to prepare policies and establish committees that are inappropriate or unnecessary for an organization of their size. Numerous other concerns abound, as discussed earlier in Paragraph I of this letter.

- m. **Part III (Governance), Line 1(b) (Independent members of the governing body):** This question regarding the number of “independent members of the governing body” does not seem to have clear relevance as it is currently worded. The concept of independence is generally associated with a particular transaction or circumstance. For example, assume a board member’s child is doing a paid summer internship with the organization. Would that fact cause the board member to no longer be an independent member of the governing body? Moreover, many professional and trade associations have boards composed of members by their very nature. Yet, these groups would not meet the “independent member” test.
- n. **Part III (Governance), Line 3(b) (Conflict of Interest Policy):** This question, asking how many transactions the organization reviewed under its conflict of interest policy during the year, is not an appropriate indicator of the effectiveness of the policy. A better question would focus on whether the policy was properly distributed to the governing body and key employees, and whether they are required to report any conflicts of interest with respect to the organization. Organizations that have been particularly diligent in enforcing their conflict of interest policy will feel penalized by having to report the number of transactions under review. This may, in fact, lead to less adherence to the policy and thus be counterproductive.
- o. **Part III (Governance), Line 7(b) (Policies with Affiliates):** This question regarding the written policies an organization has to ensure consistent operations by affiliates, chapters, etc., within the organization presumes that an organization’s affiliates are not separate entities, and will agree to be governed by such written procedures. Circumstances vary greatly in this area. Organizations should not feel penalized for not having such policies with affiliates that are, by and large, independent entities. While AFP encourages the practice of documenting affiliations among related organizations, it does not believe that a written policy is effective or even possible in all cases.
- p. **Part III (Governance), Line 9 (Audit Committee):** The question asks if the organization has an audit committee, and the instructions explain that certain state laws require organizations to have one. In fact, only

California requires this, and only of organizations with annual revenues greater than \$2 million. The question should more appropriately ask if organizations that have audited financial statements have an independent audit committee. The instructions should further clarify that an audit committee is not required under federal law.

- q. **Part III (Governance), Line 10 (Form 990 Board Review):** Full board review is not a requirement prior to filing Form 990. Some groups may only have the 990 reviewed by a committee prior to filing. The question should instead ask if the organization's board or an appropriate committee reviewed the 990 prior to filing.
- r. **Part III (Governance), Line 11 (Publicly available documents):** The only organizational document that is legally required to be disclosed is the Form 990 and, upon request, the 990-T. This question therefore seems to be encouraging another purported best practice of making publicly available various other documents, which are not relevant to whether the organization is legally compliant. Again, AFP does not believe the Form 990 is the appropriate place to instruct charities on its notions of best practices.
- s. **Part IV (Statement of Revenue) - Contributed Advertising:** Part IV is missing an itemization of contributed advertising or promotional space for such items as public service announcements or other media promotions. Schedule M and the instructions also do not address these types of contributions, which form an important category of revenue.
- t. **Part IV (Statement of Revenue), Line 3 (Membership Dues):** Line 3 only reflects the portion of membership dues for which the member receives a return value, and should be clearly stated as such in the Form, not just in the instructions. Line 1(f) (all other contributions), where membership dues for which the member does not receive return value must be listed, should be cross-referenced for clarification.
- u. **Part IV (Statement of Revenue), Line 11a-11c (Fundraising Revenue):** This information, which deals with the reporting of income and expenses from fundraising events has traditionally been an area of significant confusion and controversy. The instructions make clear which events are covered by this section, and the Service should be commended for this improvement. However, the reporting of special event activities still remains exceedingly complicated, and in most cases, will require the assistance of outside professional help not available to many small organizations that conduct regular fundraising/special event activities. An effort should be made to simplify the reporting. Complicating the matter is a requirement new to this Form that the net income be reported either as unrelated business revenue or revenue excluded from tax under IRC 512, 513 or 514. Further, the threshold above which Schedule G should be required should be changed to aggregate gross receipts from special

fundraising events of more than \$50,000. In general, \$10,000 is far too low, and will result in a very large proportion of §501(c)(3) and (c)(4) organizations being required to file Schedule G. The result will be that the IRS receives detailed information about the results of special fundraising events conducted by relatively small organizations, or that pose very low risk of excessive deductions by misinformed donors.

- v. **Part V (Statement of Functional Expense), Line 11e (Professional fundraising):** As with Part IV, Line 11a, the “trigger” for filing Schedule G should be increased from \$10,000 to \$50,000. Organizations large enough to engage professional fundraising consultants or solicitors to assist them with fundraising activities rarely spend less than \$50,000 (aggregate) in doing so.
- w. **Part V (Statement of Functional Expense) – New itemizations:** Part V includes new functional expense itemizations, including information technology, advertising, and a more detailed breakdown of fees for services. It also limits the “other expenses” line item to 5% of total expenses. AFP believes that these are positive changes that should be encouraged.
- x. **Part V (Statement of Functional Expense) – Allocation of fundraising expenses:** The “tip” in the instructions to the Core Form, stating that “expenses attributable to providing information regarding the organization itself, its use of past contributions, or its planned use of contributions received are fundraising expenses and must be reported in Column (D),” is too general, and does not reflect the guidance provided in AICPA SOP 98-2.
- y. **Part VI (Balance Sheet):** No comments.
- z. **Part VII (Statements Regarding General Activities), Line 11 (Policy on Investment or Participation in Other Entities):** AFP recommends eliminating this question, as investments or participation in disregarded entities, joint ventures, or affiliated entities are, by their very nature, dynamic, and organizations need to remain flexible in their approach, which should not be guided by a static set of procedures. Also, there are no instructions regarding Line 11 that further explain the purpose of this question.
- aa. **Part VII (Statements Regarding General Activities), Line 12 (Policy on Exempt Status):** This question, asking whether the organization has a written policy requiring the organization to safeguard its exempt status with respect to transactions and arrangements with related organizations, appears to be instructing or promoting the IRS’s uncodified notion of best practices, like several others in the Core Form. AFP believes the Form 990 is not the appropriate place for the IRS to do so.

- bb. **Part VIII (Statements Regarding Other IRS Filings) – General Comment:** Part VIII asks questions relating to statutorily-required activities or filings for nonprofit organizations. AFP fully supports this educational disclosure effort as opposed to the questions in previous Parts which refer to uncodified notions of best practices.
- cc. **Part VIII (Statements Regarding Other IRS Filings), Line 5 (Excess Benefit Transactions):** In the table provided in 5c, the column for “Corrected?” would elicit more useful responses if it instead asked for “Action Taken.”
- dd. **Part IX (Statement of Program Service Accomplishments) – General Comments:** It is disturbing that the Statement of Program Service Accomplishments is the last and least conspicuous portion of the Core Form. AFP strongly believes that this Part IX should replace Part II, in light of the following factors: (1) the first thing the public wants to know is what the organization is doing; (2) the first 2 lines of Part I briefly reference the organization’s mission and activities; (3) Part II, which now covers compensation, is not listed on Part I until Lines 6 and 7; and most importantly (4) the emphasis in a public information form (one of the apparently key purposes of the redesigned Form 990) should surely be on the organization’s accomplishments, rather than just a statistical and non-contextual review of its financial activities.

III. Specific Comments on the Schedules

- a. **Schedule A (Supplementary Information), Part II (Support Schedule for 170(b)(1)(A)(iv) and 170(b)(1)(A)(vi) Organizations), Line 1 (Contributions):** This line should also include the portion of membership fees that constitutes a contribution.
- b. **Schedule A (Supplementary Information), Parts II and III (Support Schedules), Line 16 (Effective Date of Exemption):** This line should be modified to only require disclosure of the effective date of exemption for those organizations in existence for five years or less. Many older organizations do not have this information available, and in some cases, the information is simply not available.
- c. **Schedule A (Supplementary Information), Part II (Support Schedule for 170(b)(1)(A)(iv) and 170(b)(1)(A)(vi) Organizations), Line 19 (10% Facts and Circumstances Test):** The Form should clearly state that a Schedule explaining how the organization meets the Facts and Circumstances test should be attached, and to see the Instructions for further information.
- d. **Schedule B (Schedule of Contributors) – General Comment:** A bold statement should be added to this Schedule making clear that Schedule B is not subject to public inspection and need not be provided to state

registration authorities or to the general public, except under limited circumstances (e.g., subpoena by state attorneys general, subject to restrictions against Freedom of Information Act requests).

- e. **Schedule C (Political Campaign and Lobbying Activities) – General Comment:** Each Part should be labeled with an appropriate heading to provide greater clarity.
- f. **Schedule D, Part XII (Endowment Funds):** This Part refers to Form 990, Part VII, Line 6, but this appears to be a mistake, as that line concerns tax-exempt bond financing, not endowment funds. It is also unclear whether endowment funds include those funds designated as a reserve or endowment by the board, which are temporarily restricted. The instructions should make this clear.
- g. **Schedule D (Supplemental Financial Statements), Part XIV (Reconciliation of Revenue):** This section would, for the most part, not be necessary if organizations required to perform an audit were also required to report the Form 990 on an accrual basis.
- h. **Schedule E (Schools):** No comment.
- i. **Schedule F (Statement of Activities Outside the U.S.) – General Comment:** Many international charities have components (e.g., chapters) in many other countries and those international components would face undue administrative burdens because they do record and/or report the same kind of information required in the U.S. Requiring a detailed accounting of employees activities, expenditures, etc. on a per-country basis will require these charities to divert vital resources just to gather the requisite information. This requirement, then, could have unintended negative consequences on international charities and siphon away important funds and resources out of the philanthropic process.
- j. **Schedule G (Fundraising Activities) – General Comment:** AFP has provided its comments and suggestions for revising Schedule G in a separate joint letter, a copy of which is attached. The comments provided herein are in addition to those in the joint letter.
- k. **Schedule G (Fundraising Activities), Line 1b (Chart of fundraiser information):** The requested information for Column (v) has multiple problems, all of which necessitate that it be removed entirely. First, in most cases, all contributions are paid directly to the organization, which in turn makes payments to the compensated fundraiser. Therefore, the column heading, “Amount paid to organization,” may only elicit the same information requested in column (iii). Second, subtracting the amount in column (iv) from column (iii) will provide information of little or no value, as in many cases it does not take into account other costs involved

in a fundraising campaign, such as printing, postage, mail shop, and caging fees in a direct mail campaign, or telephone, postage, and printing costs in a telemarketing campaign.

- l. **Schedule H (Hospitals):** No comments.
- m. **Schedule I (Grants and Other Assistance), Part I (Information on Grants), Line 2a and b (Grantee conflicts of interest):** The information requested in this section may prove extremely burdensome for organizations that make a multitude of grants. It may also require disclosure of donor information, protected in Schedule B from public disclosure, but not protected in this schedule. AFP suggests that question 2b be removed.
- n. **Schedule I (Grants and Other Assistance), Parts II and III (Grants and other assistance to U.S. governments, organizations, and individuals):** Again, the requirements in this section may prove extremely burdensome to organizations that make a significant number of such grants each year.
- o. **Schedule J (Supplemental Compensation Information), Line 1 (Officers, Directors, Trustees, Key Employees, and Highly Compensated Employees):** The addition of nontaxable benefits, and nontaxable expense reimbursements to the computation of compensation places an additional accounting burden on organizations that may not have a sophisticated accounting staff, and would require organizations to expend additional dollars to develop this information. There are great variations among charities' expense reimbursement policies, so it is questionable whether the IRS would receive any useful information from this proposed requirement. Also, the addition of these items on this Schedule may mislead the public and other organizations seeking to employ comparative compensation data. AFP also recommends that column (F) be moved after column (C) to more accurately summarize compensation.
- p. **Schedule J (Supplemental Compensation Information), Lines 4 and 5 (Compensation Tied to Revenues and Net Earnings):** The question concerning whether any compensation to former or current directors, officers and key employees was determined in whole or *in part* by the revenues or net earnings of the organization may be extremely difficult to answer. Many organizations award bonuses to executive employees based on numerous factors, one of which may be the relative financial success of the organization. Nevertheless, bonus practices vary from organization to organization—most include revenue generation, net earnings and other non-financial variables. Indeed, these deliberations are often made by the board in executive session, and although the decisions are based on established criteria, the formal determination is not in all cases clearly

attributable to any one factor. AFP strongly recommends that the question be modified to replace “in whole or in part” with “directly” to reflect only those situations in which compensation is tied directly to gross or net revenues.

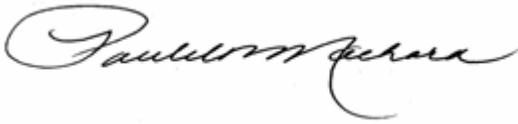
- q. **Schedule K (Tax-Exempt Bonds):** No comment.
- r. **Schedule L (Loans):** No comment.
- s. **Schedule M (Non-Cash Contributions) – General Comment:** AFP recognizes the Service’s concerns about the overvaluation of charitable deductions involving non-cash contributions. However, adding a significant burden to organizations who receive even small amounts of these contributions does not seem to be the best method of dealing with this particular concern, especially in light of the fact that donors, not donees, are required by law to obtain appraisals to support their charitable deductions. This Schedule is particularly burdensome for organizations that regularly receive clothing and household goods. AFP therefore suggests that only those non-cash contributions reported in Form 990, Part IV or Part VI be reported on Schedule M.
- t. **Schedule N (Liquidation, Termination or Significant Disposition of Assets) – General Comment:** As noted in our comments to Part I, Line 10, most public charities dispose of more than 25% of their assets annually in the normal course of operation. If Schedule N is intended to apply only to single large transactions that dispose of more than 25% of the organization’s assets, it is not clear from the Form or Instructions. Moreover, most state laws relating to the disposition of a significant amount of assets only require attorney general notification if all or substantially all of the organization’s assets are being transferred. The IRS is therefore imposing a significantly greater reporting burden on charities than would otherwise be required by states.
- u. **Schedule R (Related Organizations) – General Comment:** Some of the information in this Schedule would not otherwise be publicly available, and in some cases, may constitute confidential financial information or even trade secrets. AFP believes that the Service should revisit the requirements of this Schedule to determine how it can prevent such unwarranted disclosures.

IV. Conclusion

Once again, AFP thanks the IRS for the opportunity to submit its comments, and assist in this important process of restructuring the Form 990. The Form 990 serves as the primary source of data on exempt organizations for the IRS and the public alike, and it is therefore critical that appropriate data be collected that will benefit the philanthropic community as a whole. AFP hopes that our comments provide the Service with additional insight on how the draft Form 990 and Schedules could positively and (perhaps inadvertently) negatively impact significant numbers of exempt organizations, particularly with respect to their fundraising efforts, and we remain available to offer any additional assistance that might be appropriate.

Thank you for your time and consideration.

Sincerely,

A handwritten signature in cursive script, reading "Paulette V. Maehara".

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September 14, 2007

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Ms. Theresa Pattara
Form 990 Redesign
ATTN: SE:T:EO
111 Constitution Ave., N.W.
Washington, DC 20224

Re: Comments on fundraising aspects of the “redesigned” Form 990

Dear Mr. Schultz and Ms. Pattara:

In an effort to consolidate and focus the concerns of the fundraising community, four principal umbrella groups have banded together to offer these unified comments. We are the Council for the Advancement and Support of Education (CASE), the Association of Fundraising Professionals (AFP), the DMA Nonprofit Federation (DMANF), and the Association of Direct Response Fundraising Counsel (ADRFCO).

CASE is an international association of 52,000 fundraising, communications, marketing, and alumni relations professionals at 3,300 schools, colleges, and universities. AFP represents nearly 28,000 individual members and works to advance philanthropy through advocacy, research, education and certification programs. AFP members work for nonprofits of every size and shape, from large multi-national institutions to small, grassroots organizations. DMANF consists of over 400 nonprofit member organizations that rely on direct and interactive marketing to raise funds and awareness for their missions. It was established 25 years ago and advocates in postal, regulatory, and legislative issues affecting its members. ADRFCO is the professional association for agencies that provide consulting services to nonprofit organizations with respect to direct response fundraising. The forty or so member firms serve over 750 nonprofit clients.

For convenience, we refer to our informal group as the “The Fundraising Coalition.” We thank you for the opportunity to present our comments. But more than that, we thank you for your courtesies and patience in meeting with us in advance of this comment deadline. The opportunity to discuss issues face-to-face proved invaluable in helping us shape our comments.

The following comments are limited to aspects of the redesigned Form 990 that particularly relate to fundraising. They first address aspects of Form 990 outside of Schedule G, then some definitional issues, then consider the “triggers” that require an exempt organization (“EO”) to file Schedule G, and then move to comments on Schedule G itself.

NON-SCHEDULE G ISSUES

1. Fundraising and Gaming

The most important issue to be addressed is the separation of fundraising from gaming. Although both result in accretions of money to a charity or other EO, the fundraising community *unanimously* views fundraising and gaming as two distinct, unrelated, and separate activities. ***The conduct of bingo and other games of chance to raise money for EOs is not “fundraising.”***

First, although gaming may be considered a form of raising funds in that gaming, like fundraising, results in net accretions of revenue to the EO, gaming activities differ fundamentally from fundraising activities. Gaming is a form of entertainment or recreation in which most

players pay fair market value for the opportunity to win a prize. In contrast, the essence of a fundraising activity is to persuade donors to make a gift to the EO. Although some fundraising has an “exchange” element, and may include incidental “gaming” (such as a raffle or door prize), that is not its essence.

There is also a less technical, but no less important, rationale for a separation. Rightly or wrongly, in common usage the term “gaming” carries a whiff -- at the very least -- of the disreputable. Linking gaming and fundraising in the Form 990 makes it likely that some of this taint will be transferred to fundraising. However slight this effect might prove to be, it is not fair to the thousands of nonprofits engaged in raising funds from the public and it is unnecessary.

A distinct separation is consistent with the Code’s treatment of most games of chance as unrelated trade or business, while amounts received through fundraising activities are treated as gifts.

Thus, throughout the Form 990 and its schedules and instructions, “gaming” should be treated separately from, and not as a part of, “fundraising.”

a. The gaming information in Schedule G, Part III should be deleted from Schedule G and moved to a separate schedule.

In addition, to avoid unduly burdening EOs that conduct only incidental gaming, and collecting information about such incidental gaming activities, an EO should be required to complete a separate schedule reporting about gaming activities only if it either (1) conducts gaming activities more than 6 times per year; or (2) receives more than the lesser of \$25,000 or 25% of its gross receipts from gaming. This will eliminate reporting from those organizations that conduct an occasional raffle or other gaming activity as an insignificant part of their activities.

Otherwise, the Coalition has no comments on the information proposed to be collected about gaming activities.

b. In Form 990, Part IV, line 11a, the references to gaming should be removed, and information about gaming should be reported on a separate line. The instructions for line 11a will also need to be revised to remove the portion of the chart that states that “Gaming is a fundraising activity. . . .” and lists examples of gaming activities. That should be moved to the instructions for the new line on which gaming revenue would be reported.

c. Form 990, Part I, lines 25 and 26: Although we advocate removal of these lines altogether (see below), if they remain on Form 990, they should be separated, the caption “Gaming & Fundraising” should be deleted, and the phrase “(other than gaming)” should be deleted from the title of line 26.

2. Form 990, Part I: Lines 25 and 26 should be deleted.

First, the information required by these lines is not “summary information,” but details about the financial results of two particular aspects of the EO’s activities, fundraising (if any) and gaming (if any). By highlighting this information on page 1 of the “core” Form 990, the information is given undue prominence.

Further, line 26 would be capturing information on the “summary page” that does not, in fact, summarize the organization’s fundraising. Even if computed carefully and consistently (see our comments, below) the Schedule G data only report fundraising associated with outside professionals. Proportionately miniscule results with professionals could be reported on the summary page while millions raised in-house *by the same filer* might not be. Whatever the line

26 boxes represent, it's not a "summary" and would not be useful or illustrative for any users of Form 990.

Equally important, many EOs (e.g., trade associations or credit unions) do not engage in any fundraising or gaming. Many others do engage in fundraising but do not employ professionals to assist them (or do not do so at Schedule G threshold levels). None of these organizations would have anything to report on line 26. The fact that either or both of these two prominent lines are blank will lead some readers to believe that the EO has not properly completed Form 990.

Finally, should these lines remain in Form 990, the percentages called for in column (iv) also do not provide any meaningful information about the EO's qualification for exemption, its liability for any other tax, or even about the organization's overall fundraising performance, and column (iv) should be deleted.

3. Part IV – Statement of Revenue

a. **Line 1b** – The term "outside fundraising" has no commonly accepted meaning among EOs. Moreover, although development departments ordinarily track amounts contributed in response to campaigns developed or executed by fundraising consultants or professional solicitors, this information is used primarily for evaluating campaigns, and is not ordinarily communicated to finance offices, nor is it the subject of financial reporting. From the financial reporting perspective, they are all simply "contributions."

b. **Line 1g** – This line should read, "Attach Schedule M if total exceeds \$5,000" as is noted in the instructions (compare with line 11a, re: Schedule G).

That having been said, the \$5,000 threshold is too low. This should be increased to \$25,000. (One used car in good condition would be enough to exceed the threshold.)

4. Miscellaneous matters

a. Part V – Statement of Functional Expense

Column (C) – Line 4 of the instructions should refer to "supervising or carrying out program services or fundraising activities."

Column (D) – Although the instructions (at the bottom of page 29) cite the Glossary, the Glossary does not define "joint costs" or "SOP 98-2."

Lines 1-4 – Columns (C) and (D) should be shaded to preclude any reporting in those columns.

b. Part VIII – Statements Regarding Other IRS Filings

Line 13a should ask about dispositions of *any* personal property (including nonpublicly traded securities) for which it "was required to file" Form 8282. (Compare Line 14.)

Form 1098-C – It would seem appropriate to add a question to the core form inquiring about whether the EO received any vehicles, boats, or airplanes for which it was required to file Form 1098-C, and how many Forms 1098-C it filed.

c. Part IX – Statement of Program Service Accomplishments

Page 47 of the instructions refers the user to "the instructions for Part IV, Line 1, "Donated Services or Facilities." There are no such instructions in the Draft.

DEFINITIONS

Because certain terms have not been defined, and may be subject to varying interpretations by reporting EOs, we recommend that the following definitions be added to the Glossary, where they would apply for both the core Form 990 and Schedule G.

1. “Special fundraising event” should be defined in the Glossary as:

Any event (other than an event conducted in the course of a trade or business that is regularly carried on) for which the organization charges a fee (that may exceed the fair market value of comparable events) to attend or participate, such as a dinner; a sports event; an entertainment or artistic performance or display; or a participatory athletic event. See Rev. Rul. 67-246.

Concurrently, the term “fundraising events” would be changed to “special fundraising events” in Form 990, Part IV, lines 1c, 11a, and 11c, and in Schedule G, Part II (title). Of course, complementary changes would be required in the instructions.

This definition is consistent with the common usage among EOs.

2. “Professional fundraising” should be defined in the Glossary as:

Services performed (other than by an officer, director, or employee in their capacity as officer, director, or employee) for the organization requiring the exercise of professional judgment or discretion consisting of planning, management, or the provision of advice and consulting regarding solicitation of contributions; or the direct solicitation of contributions. However, “professional fundraising” does not include purely “ministerial” tasks, such as printing, mailing services, or receiving and depositing contributions by an entity, such as a bank or “caging” service.

3. “Fundraising activities” should be defined in the Glossary as:

Activities undertaken to induce potential donors to contribute money, securities, services, materials, facilities, other assets, or time. They include publicizing and conducting fundraising campaigns; maintaining donor mailing lists; conducting fundraising events, preparing and distributing fundraising manuals, instructions, and other materials; and conducting other activities involved with soliciting contributions from individuals, foundations, governments, and others.

“Fundraising activities” do not include gaming (other than gaming that is incidental to a fundraising activity), or the conduct of any trade or business that is regularly carried on.

The first sentence of this definition is identical to the definition in the AICPA *“Audit and Accounting Guide for Not-for-Profit Organizations.”* The second sentence is added to clarify that the conduct of gaming and other trades or businesses are not fundraising activities.

SCHEDULE G “TRIGGERS”

The draft Schedule G has two separate and distinct “triggers”: (1) Payment of at least \$10,000 for “professional fundraising,” or (2) receipt of at least \$10,000 from fundraising events (including gaming).

First, these triggers are too low. The “triggers” for filing Schedule G should be either (1) \$50,000 in gross receipts from “special fundraising events,” or (2) expenditure of more than \$50,000 for professional fundraising services.

1. Part IV, line 11a – The threshold above which Schedule G should be required should be changed to aggregate gross receipts from special fundraising events of more than \$50,000. In general, \$10,000 is far too low, and will result in a very large proportion of §501(c)(3) and (c)(4) EOs being required to file Schedule G. If the threshold were to remain at \$10,000, the result will be that the IRS receives detailed information about the results of special fundraising events conducted by relatively small organizations, and/or that pose very low risk of excessive deductions by misinformed donors.

2. Part V, line 11e – As with Part IV, Line 11a, the “trigger” for filing Schedule G should be increased from \$10,000 to \$50,000. In general, EOs that engage professional fundraisers for any substantial undertaking of public solicitation spend, in the aggregate (including expenses billed by or through the fundraiser), at least \$50,000.

These changes would also require a change from “\$10,000” to “\$50,000” in the filing requirement set forth just under the title of Schedule G.

3. Schedule G – Required information

Once Schedule G is required to be filed, EOs should be required to complete each part of Schedule G as if they were separate schedules. Specifically, an EO that is required to file Schedule G only because it received more than \$50,000 from fundraising events should be required to complete Part II, but not Part I. Likewise, an EO that is required to file Schedule G only because it paid more than \$50,000 for professional fundraising should be required to complete Part I, but not Part II. Of course, an EO that both received more than \$50,000 from fundraising events and paid more than \$50,000 for professional fundraising would be required to complete Parts I and II. The instructions on the Core Form for Part IV, line 11a and Part IV, line 11e should also reflect this limitation.

This will reduce the reporting burden on EOs, yet still provide the IRS with appropriate information about fundraising activities and events that are significant sources of revenue.

SCHEDULE G – SUPPLEMENTAL INFORMATION REGARDING FUNDRAISING ACTIVITIES

The title should be revised to read, simply, “Fundraising Activities.”

1. Gaming

As discussed above, we believe that detailed information regarding gaming activities should be reported on a separate schedule from fundraising activities.

2. Part I – Fundraising Activities

a. Line 1a – The listing of different kinds of fundraising activities is incomplete, too inclusive, and inconsistent. Five of the six listed options are methods of fundraising – the sixth, “grants from governments or organizations,” is a source. (Form 1023, Part VIII, line 4 shares the same defect.)

In addition, as the draft Schedule G stands, *all* §501(c)(3) and §501(c)(4) organizations would be required to check the boxes for mail, e-mail, and phone solicitations, even if the CEO only made one phone call, wrote one letter, or sent an e-mail to a prospective or past donor. Instead, the boxes should be checked only if the EO uses a professional fundraiser to assist it in conducting fundraising by that method. This will result in more meaningful reporting for both IRS and state regulators’ purposes. **For this reason, Line 1a should be revised to read as follows:**

Does the organization compensate any individual (other than as an employee) or entity to provide professional fundraising services with respect to any of the following fundraising activities? (Check all that apply.)

- Mail (1) In-person solicitation (4) Solicitation of government grants (7)
 E-mail (2) Special fundraising events (5)
 Telephone (3) Solicitation of non-government grants (6)

The instructions should include examples of non-government grants, including, e.g., grants from public charities, private foundations, other exempt organizations, and businesses.

b. Line 1b – This question is far too broad, and would require reporting of amounts paid to non-key employees engaged in fundraising, printers, list brokers, lettershops, the Postal Service, “cages” (businesses -- including banks -- that process and deposit contributions), web hosting services, webmasters, event planners, florists, caterers, and many others. **To focus the question on significant information, line 1b should be revised to read as follows:**

Complete the table with respect to any individual or entity that provided professional fundraising services (other than as an officer, director, or employee) to the organization and either: (1) was paid at least \$10,000 by the organization for professional fundraising services or (2) had custody or control of funds contributed to the organization.

The instructions should state that custody or control of funds includes control exercised through any arrangement in which the fundraiser’s approval is required to disburse funds from an account of or for the benefit of the charity.

c. Table

The headings for several of the columns are confusing, and, depending on how expenses for services provided by third parties in connection with a fundraising campaign or event are billed, may lead to reporting of dramatically different *apparent* results for campaigns or events in which the charity netted the same amount. **For these reasons, the column headings in the table should be revised to read as follows:**

- Column (i) - Name of individual or entity (fundraiser)
- Column (ii) - Activity [no change]
- Column (iii) - Gross contributions from activity
- Column (iv) - Gross amount paid to fundraiser
- Column (v) - Costs

The instructions for Column (ii) should direct the filer to enter the number of the corresponding activity listed in line 1a. The instructions for Column (iii) should be revised to read: “Enter the gross amount of contributions received by or for the organization as a result of the fundraising activity with respect to which the fundraiser listed in column (i) provided services.” It is rare for fundraisers to actually collect funds on behalf of a charity, and as the instructions are drafted (amounts the fundraiser “collected”), in nearly all cases, the correct response would be “-0-”.

The instructions for Column (iv) should be revised to read: “Enter the total amount of (1) fees paid to the professional fundraiser, (2) incidental expenses incurred and billed by the professional fundraiser, and (3) costs incurred for goods, services, or other benefits provided by third parties (e.g., printers, lettershops, postage) that were paid to the fundraiser by the organization.

The instructions for Column (v) should be revised to read: “Enter the amount of costs incurred by the organization in connection with the fundraising activity described in Column (ii)

and paid directly to a third-party vendor. These may include charges for printing, for a lettershop to assemble mailings, for radio or TV time, or for postage.

We recognize that this eliminates the current column (v), which reports the net amount the EO received from the fundraising event or campaign, but that data can be easily determined by those who are interested. In any event, the proposed changes will result in more consistency in reporting by EOs regarding their financial relationships with outside professional fundraisers.

d. Line 2 – In light of the changes proposed in line 1b, line 2 should be revised by inserting a new question 2a, to read as follows, and by renumbering the draft question 2 as question 2b:

2a. Did the organization pay any disqualified person (other than in their capacity as an employee) for professional fundraising services? If “Yes,” complete Form 990, Part II, Section B, Line 5f.

e. Line 3 -- should be revised to read as follows: “Check the box in front of the name of each state in which the organization is registered or licensed to solicit funds (or which it has notified that it is exempt from registration or licensing).”

This eliminates ambiguity about the meaning of the term “authorized,” and clearly describes the condition that requires reporting. Significantly, it also eliminates the potential -- and considerable -- burden of requiring the filer to report a legal conclusion. Instead, it requires reporting of explicit actions taken by the filer. (We note here that the Line 3 instructions should tell filers to also check the box if they have made good faith application for registration or license but have not received confirmation from the respective state at the time of 990 filing).

To facilitate electronic reporting and completeness, instead of two lines in which state names or abbreviations are written in, line 3 should include a list of all 38 states and D.C., that require soliciting nonprofits to register. The form would supply boxes to be checked if the EO is either registered or licensed in the jurisdiction, or if it has notified the jurisdiction that it is exempt from registration in the state.

For example, Line 3 could read: “Check the box next to each state in which the organization is either registered or licensed to solicit contributions, or that the organization has notified that it is exempt from registration.” The list would include only those 38 states (and D.C.) that require charities to be registered or licensed.

Alabama	Georgia	Mississippi	Oregon
Alaska	Illinois	Missouri	Pennsylvania
Arizona	Kansas	New Hampshire	Rhode Island
Arkansas	Kentucky	New Jersey	So. Carolina
California	Louisiana	New Mexico	Tennessee
Colorado	Maine	New York	Utah
Connecticut	Maryland	No. Carolina	Virginia
D.C.	Massachusetts	No. Dakota	Washington
Florida	Michigan	Ohio	West Virginia
Minnesota	Oklahoma	Wisconsin	

3. Part II – Special Events

The title should be revised to read “Special Fundraising Events.”

To ease the burden on small organizations, and to facilitate the collection of meaningful information, the instructions should state: “Do not report amounts from any events whose gross receipts did not exceed \$10,000 in the columns for “Event #1” or “Event #2. Instead, enter the aggregate amounts for all such special fundraising events under “Event #3.”

4. Part III – Gaming

Consistent with the comments above about the importance of clearly distinguishing between fundraising and gaming, and moving the collection of information about significant gaming activities to a separate schedule, Part III should be deleted from Schedule G and moved to a separate schedule.

We appreciate the opportunity to submit these formal comments. We also appreciate the meeting time you spent with us during a very busy time shortly in advance of these comments. Without the dialogue with IRS staff that began in those meetings, we would not have been able to tailor our comments to the needs of the Service (and the Service's perceptions of the needs of other users) as we came to understand them.

We hope to be able to continue this dialogue as the Service processes the many public comments and makes its decisions about the final content of the new Form 990. To that end, the participating organizations of the Fundraising Coalition commit to making our representatives available to the Service as you navigate your decision process.

Thank you for your consideration of our comments and suggestions.

Sincerely,

The Fundraising Coalition

Council for the Advancement and Support of Education
Association of Fundraising Professionals
DMA Nonprofit Federation
Association of Direct Response Fundraising Counsel

From: [Cooper, Amanda](#)
To: [*TE/GE-EO-F990-Revision;](#)
CC: [Pollak, Thomas; Boris, Elizabeth;](#)
Subject: NCCS Final Comments
Date: Friday, September 14, 2007 5:15:19 PM
Attachments: [NCCS Final Comments to the IRS.pdf](#)
[Blazek and Vetterling Revised Draft.pdf](#)

Dear Sir/Madam:

Attached please find the final comments from NCCS regarding the revision of the Form 990. Please let me know if you have any trouble with the files.

Thank you,

Amanda Cooper
Project Administrator
Center on Nonprofits and Philanthropy at the Urban Institute
acooper@ui.urban.org
(202) 261-5433

<<NCCS Final Comments to the IRS.pdf>> <<Blazek and Vetterling Revised Draft.pdf>>

National Center for Charitable Statistics
Center on Nonprofits and Philanthropy

phone: 202-261-5348
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MEMORANDUM

To: Steve Miller, Lois Lerner, Ron Schultz, and Theresa Pattara
IRS Tax Exempt/Government Entities Division

From: Elizabeth Keating, Associate Scholar, The Urban Institute
(617) 721-2536, _____

Thomas Pollak, National Center for Charitable Statistics, Urban Institute
(202) 261-5536, _____

Date: September 14, 2007

Re: Suggestions Regarding the Form 990 Proposed Redesign

INTRODUCTION

Thank you for this opportunity to offer our thoughts on the proposed Form 990 Redesign. For the past two months, we have offered a wiki to collect comments from both practitioners and researchers. We were also pleased to have the opportunity to host a seminar last Friday with so many members of IRS TE/GE Division attending.

The comments on the wiki and at the conference were plentiful, so we have decided to use this opportunity to highlight the changes that we feel are the most crucial for the filers, researchers, state regulators and the public.

PRIMARY RECOMMENDATIONS

The five **most essential changes** we recommend are:

1. Revise the summary page, remove the ratios, and reorder the form and schedules.
2. Expand the reporting of private contributions.
3. Expand the reporting of government funding.
4. Require the inclusion of the full audited financial statements for those organizations that have them.
5. Allow filers to provide text explanations.

We discuss these essential changes in more detail and then offer a set of secondary recommendations.

1. Revise Summary Page, Remove Ratios, and Reorder the Form and Schedules.

A. The Ordering of the Form

Unlike any other IRS Forms, the Form 990 and its schedules are designed for taxation and compliance purposes as well as public disclosure requirements. The new proposed form does much to meet the tax and compliance needs of the IRS; however, the form needs to pay greater attention to serving public information needs.

For these reasons, we strongly urge the IRS to reorder the form and schedules to present the data in a more logical order for the public, consistent with that proposed by Jody Blazek (copy attached). We also recommend that the questions on the general activities section be reordered to match the order of the schedules.

Parts I through IX would be reordered as follows:
[June 14, 2007 draft Part Nos. are in parentheses]

- Part I (same) – Summary
- Part II (IX) – Statement of Program Service Accomplishments
- Part III (IV) – Statement of Revenue
- Part IV (V) – Statement of Functional Expenses
- Part V (VI) – Balance Sheet
- Part VI (III) – Statements Regarding Governance, Management,
and Financial Reporting
- Part VII (same) – Statements Regarding General Activities
- Part VIII (II) – Compensation and Other Financial Arrangements with Officers,
Directors, Key Employees, Highly Compensated Employees,
and Independent Contractors
- Part IX (VIII) – Statements Regarding Other IRS Filings

B. Summary Page

We recommend that the summary page add the following information:

- Key program accomplishments (Part IX, Line 2)

We recommend that the following items be eliminated:

- The number of governing board members (or if retained change to voting members) (Part I, Line 3)
- The number of employees earning over \$100K (Part I, Line 6)
- The top paid employee's compensation (Part I, Line 7)
- Ratios (Part I, Lines 8b, 19b, 25iv, and 26iv)
- Gaming and telemarketing data

These suggestions are largely consistent with the alternative page 1 proposed by Jody Blazek. We suggest that the following Blazek line items not be adopted:

- Officer, director & key employee compensation (line 21)
- Divide line 21 by line 12 (line 22)
- See Parts VII and VIII for...plus general information (line 23)

We suggest the following revision to line 3 (Contributions and grants) of the Blazek Part I Summary:

- 3a. Grants and contracts from government (Part IV, line 1e)
- 3b. Contributions, gifts, grants and similar amounts from the public (Part IV, line 1h minus line 1e)

It is important that there be a major distinction in the *Summary* between public support received from federal, state and local governmental agencies (line 3a) and public support received from non-governmental sources (line 3b). In this way, line 3a (and Part IV, line 1e) will include all revenues from governmental agencies except for (a) Medicare and Medicaid and (b) fees and contracts from governmental agencies for services “that benefited the government agency primarily, either economically or physically” rather than “benefit the public directly and primarily” (Form 990 Instructions (2006) for Line 93g – *Fees and contracts from government agencies*).

We also suggest the following revision to line 9 (Program service expenses) in the “Expenses” section of the Blazek Part I Summary (note that “Part II” refers to Part IX in the June 14, 2007 draft Form 990).

Expenses

9. Program service expense (Part II[IX], lines 3a through 3e, Column (B)) a. (Part II, line 3a) _____ b. (Part II, line 3b) _____ c. (Part II, line 3c) _____ d. (Part II, line 3d) Other program services _____ e. (Part II, line 3e) Total program services (add lines 9a through 9d, must equal Part V, line 24, column (B)) _____	<table border="1" style="border-collapse: collapse;"> <tr> <td style="padding: 2px;">Act. Code</td> </tr> <tr> <td style="height: 15px;"> </td> </tr> <tr> <td style="height: 15px;"> </td> </tr> <tr> <td style="height: 15px;"> </td> </tr> </table>	Act. Code				_____ _____ _____ _____ _____ _____ _____ _____
Act. Code						
10. Management and general (Part V, line 24, column (C)) _____ 11. Fundraising expense (Part V, line 24, column (D)) _____ 12. Total expenses (must equal Part V, line 24, column (A)) _____		_____ _____ _____				

This would provide users of Forms 990 with a summary of expenses for the three most significant program services and activities. This would also serve the reporting purposes intended for line 2 in the IRS June 14, 2007 draft (see “Act. Code” column) and coordinate it with the Statement of Program Service Accomplishments.

C. Eliminate the Ratios

The draft form proposes several ratios. We encourage the Service to remove these ratios for several reasons. Any ratios presented on the form could be interpreted by the public as recommended by the IRS. As was suggested at the Emerging Issues Seminar we hosted on September 7, 2007, ratios reported without explanations may often be misleading for the average donor. As the Urban Institute/Indiana University

Overhead Cost Study¹ found, reporting of functional expenses (fundraising, etc.) has been especially inconsistent, despite guidance from both FASB and IRS instructions, and both the management and fundraising expenses vary widely by the size, age, and type of organization

Since ratios can be computed by the Service for use by its field agents, the Service would not lose information that it relies upon by removing the reporting of ratios on the Form 990.

2. Expand the Reporting of Private Contributions

Government agencies, researchers, and umbrella organizations that use NCCS data have repeatedly sought more detail regarding contributions from IRS Form 990s. Two forms of data regarding contributions are consistently requested: (1) source of contribution and (2) restrictions on those contributions (unrestricted, temporarily restricted, and permanent restricted).

Federal agencies such as the U.S. Census Bureau and the Agency for International Development already collect this information through other data collection systems, and a significant number of umbrella organizations currently invest in the expensive process of collecting this information from their members through inexact and costly surveys.² The cost may be minimal since most organizations already separate their contributions into these or similar categories for their own purposes.

There are a number of feasible approaches to strengthening this section. At minimum, line 1f could be expanded to distinguish between individual, foundation, or business/corporate gifts. A more thoroughly revised Contribution section might look like this:

	Unrestricted	Temporarily Restricted	Permanently Restricted
Individuals			
Direct			
Special events			
Donor advised funds & federated fundraising			
Foundations (excluding corporate)			
Corporations & businesses			
Direct			
Corporate foundations			
Related organizations			
Government contributions (grants) & "public service" contracts			
Total contributions, gifts & grants			

¹ See the Research Briefs at <http://www.coststudy.org> for details.

² See, for example, the U.S. Economic Census form for performing arts organizations; the U.S. AID Form 1550-2 at <http://www.usaid.gov/forms/>;

3. Expand the Reporting of Government Funding

Historically, the filers have had difficulty allocating government funding into the appropriate revenue categories since the IRS definition of a government grant differs from GAAP. Furthermore, it appears that only about one in three organizations with Medicare and Medicaid fees are reporting them on the current 990. Moving fees and contracts from government agencies and Medicare/Medicaid payments into the same section of the form as government grants might help address the underreporting problem, but it will not address the confusion about the distinction between "grants" and "contracts" for Form 990 reporting purposes.

Unfortunately, we believe that many filers will make the same errors in completing these (proposed) lines, so we recommend two additional changes be made: (1) strengthen the instructions advising the nonprofit how to distinguish the three types of government funding, and (2) require a small sub-schedule that asks nonprofits to capture all forms of government funding in one place. This additional disclosure would enhance transparency and improve reporting. It could be as simple as asking the filer to repeat the three lines with some additional detail and provide a total as follows:

- | | |
|--|-------------------------|
| 1. <i>Government contributions (grants)</i>
and " <i>public service contracts</i> " | [NEW: Line 1e, Part IV] |
| 2. <i>Fees and contracts from government agencies</i> | [NEW: Line 2b, Part IV] |
| 3. <i>Medicare/Medicaid payments</i> | [NEW: Line 2a, Part IV] |
| 4. Total Funding (sum of 1, 2 and 3) | |

We strongly encourage the IRS to carefully draft the instructions as filers and users are confused about how to distinguish a fee and contract from a contribution/grant. We suggest that the instructions be substantially expanded to clarify the IRS distinctions between contributions and fees/contracts and to clearly explain how the IRS definitions differ from GAAP definitions.

4. Require the Inclusion of the Full Audited Financial Statements for Those Organizations That Have Them

We encourage the IRS to require nonprofits that have audited financial statements to provide them in electronic format. To be clear, we are *not* recommending that IRS impose additional auditing requirements on nonprofits. Approximately 20 states require nonprofits to file their audited financial statements with their annual filing. (Smaller organizations are exempted.) By having the IRS collect the audited financial statements, it would reduce the filing burdens for those nonprofit filers that must file in multiple states, greatly enhance the transparency of the sector, and may permit state charity offices to operate more efficiently since they will no longer have to obtain and store these statements in their own paper files.

Some audited financial statements are "consolidated": They combine multiple related entities that file separate 990s.³ We recommend that any entity that is filing a Form 990 be required to include audited financial statements if the Form 990 reporting entity's financials are included as part of any audited financial statements.

To clarify the relation between the Form 990 filing entity and the audited financials, we recommend that these entities either complete: (1) the reconciliation between the audited financial statements, OR (2) a statement explaining that it is unable to complete reconciliation due to differences in the reporting entity. If the statement is completed, the filer should be required to disclose the names of entities that are included in one document and not the other, and the numerical differences in key financial measures (assets, liabilities, net assets, revenues, expenses, and net income).

5. Allow Filers to Provide Text Explanations.

As a public disclosure document, it is important for filers to have an opportunity to explain their answers to specific questions. We encourage the IRS to allow nonprofits to include written explanations that are available to the public to clarify a particular line, section, part or schedule. One approach is to provide a "Schedule O" for explanations. Each explanation would also identify the line, section, or part that it discusses. If this approach is adopted, a check box should be added in each part or major section to alert the reader that an explanatory comment is provided in Schedule O.

An alternative would be to allow or encourage a structured commentary. For example, corporations are required to provide a detailed management, analysis and discussion (MDA) in their annual 10-K filing with the SEC. State and local governments must provide MDAs as part of their comprehensive annual financial reports (CAFRs).

Either of these approaches is consistent with the current approach used by the IRS for e-filing the Form 990. For e-filed returns, numerous "additional explanations" (as well as "compensation explanations" for the compensation parts) can be added. These provide up to 9,000 characters each – numerous pages – and can also be linked to specific lines or parts of the form.

³ Some examples: a nonprofit hospital system includes its nonprofit hospitals in its consolidated statement, or a college includes its fundraising support organization.

SECONDARY RECOMMENDATIONS

I. General Comments

6. Program Codes

The IRS has asked for input on the codes to be used to categorize nonprofits. We request that the IRS collect two forms of codes: (1) NTEE classifications, and (2) the NCCS activity codes in the Nonprofit Program Classification System (NPC). Both systems would save the IRS time and money and ensure the use of well-researched and frequently updated systems and web-based tools that have been tailored to meet the needs of practitioner and researchers. Our experience with IRS Activity Codes and the NTEE system over the past decade lead us to believe that self-classification can create major problems or be a tremendous asset; it all depends on the quality of the tools available for the classifier. Web-based tools that provide a simple Google-like interface is the key to making this work, and we have already developed these tools for the NTEE and NPC systems.

We recommend that the IRS work with NCCS, the Foundation Center and other stakeholders to either refine the NTEE classification system or use the NCCS Nonprofit Program Classification System (NPC) for categorizing programs.

7. Form 990-EZ and Filing Thresholds

From talking with state regulators and the research community, we understand that both of these groups support retaining the current \$25,000 threshold or raising it to no more than \$50,000 for filing the Form 990, and eliminating a simplified filing comparable to the Form 990-EZ.

Since much of the core form will not apply to smaller organizations, we feel that completing the full form would not be an undue burden. It should also be noted that nonprofit fraud research by Marion Fremont-Smith suggests that smaller organizations are more likely to experience fraud, so demanding they complete the full core form may be in the IRS and the sector's best interest. We do feel, however, that the filing thresholds of \$5,000 for Schedules F, G and I could place a burden on many smaller organizations, so we recommend raising these thresholds to \$25,000.

8. Reporting Entity

Under the new proposal, each legal entity would complete a Form 990, and the current ability to file a group return would be eliminated. Numerous organizations have commented that this would be quite burdensome. Others have argued that neither the individual return nor the current group filing allow the public to get an accurate picture of the organization and its operations. Others commented that having the IRS reporting entity be the same as the one covered in the audited financial statements, when possible, would be desirable.

Far more common than the numerous "child" organizations that have a single group return filed by their parent organization are "single organization support organizations"—the 509(a). More than 20,000 of the 330,000 public charities that file 990s are listed by the IRS as "single organization support organizations" (also called "509(a)(3) organizations"). The finances of many of these are consolidated in the audited financial statements but must then be broken apart again for purposes of completing the Form 990.

Although there may be statutory impediments, we recommend that the IRS make every effort to permit organizations that complete consolidated audited financial statements to be able to complete the Form 990 as a consolidated organization as well. Thus, the same entity or group of entities in the financial statement would be in the 990.

Some have worried about the loss of detail when consolidation occurs, but others have pointed out that the statements are, in fact, more transparent and clear when they can be seamlessly combined with audited financials.

As these are complex issues, we recommend that the IRS defer eliminating the group filing option or acting on the recommendation to permit consolidated Form 990s until it has been able to convene a working group to examine this issue. Any disclosures that are specific to this issue can be contained in a schedule that could be added or deleted at a future time.

9. Instructions

Instructions for the new Form 990 and related schedules are limited. We encourage the IRS to make available draft instructions and allow a period for comments and questions. (This might be done in sections to permit the IRS to continue its drafting work while comments are collected on other sections.)

10. Testing the Form

Develop systematic ways to assess proposed changes to the form and instructions with a "test plan," "test cases" and "destructive testing." If there is one lesson that we take away from years of working with nonprofit organizations and Form 990s, it is that there are an amazingly wide variety of organizations and situations to understand if one is to design a form and instructions that meet the broad needs of stakeholders. A question or instruction that makes perfect sense in the context of one organization makes none in the context of another.

One of the standard texts in software development estimates that testing takes 40-45 percent of the development effort. This is probably not comparable to form development, but the broader message does seem applicable: Testing a system—software, a tax form—under a wide variety of conditions is essential to creating a system that meets stakeholder needs.

We recommend that the IRS, if feasible, allocate the necessary staff to ensure that this systematic testing occurs. However, we recognize that the IRS has limited

resources and in-house expertise for this effort. If it cannot be accomplished given current staffing constraints, we recommend that the IRS work through the Advisory Committee on Tax Exempt and Government Entities (ACT), support a volunteer working group of experts, or develop some other mechanism to work with key stakeholders or experts to provide the requisite testing.

II. Financial Disclosures

11. GAAP Compliance

Historically the IRS and GAAP required different bases of accounting for corporate and nonprofit filings. While the necessity of this is clear for corporations due to tax computational purposes, it is unclear why certain differences are needed for nonprofit filers. We encourage the IRS to strictly limit these reporting differences. Some specific measures to make the 990 filings more GAAP-compliant are:

- Convert contra-revenues (with the exception of "basis of sales of assets other than inventory") into expenses that would be shown in the Statement of Functional Expenses.
- Permit inclusion of GAAP-compatible donated professional services and use of facilities under "non-cash" in line 1 of the Statement of Revenue. In addition, allow nonprofits to provide optional data on the contributed volunteer services that do not meet the criteria for financial statement disclosure under GAAP.

12. Other Changes to Improve Transparency, Accuracy, and Understandability

We believe the following changes will make the financial disclosures easier to understand for filers, their governing boards and the public and will reduce inaccuracies and make it more difficult to intentionally misreport.

- Provide instructions on the allowable methods for accounting for various items.
- Move the reconciliation of net income to changes in net assets (presently Part I, Lines 18 to 21) back onto the core form.
- Restore the joint cost allocation information.
- Restore the information on allowances for doubtful accounts.
- Allow filers to disaggregate unrestricted net assets into a board designated and undesignated categories.
- Classify the balance sheet between current and non-current assets and liabilities, a standard measure of financial liquidity used by lenders and others to assess financial viability. These lines could be optional for organizations that do not classify their balance sheets on their financial statements.
- Make endowment funds reconcile to the balance sheet, perhaps by using comment fields within investments and fixed assets. To do this may require moving the type of investment breakdown into Schedule D.

- Clearly define professional fundraising fees in the instructions and identify where to report them and the inappropriateness of recording these amounts on other lines.

III. Governance & Compensation Issues

We recommend the following changes:

13. Trustee-Related Disclosures

- Questions about the number of trustees should separate voting members from non-voting members.
- The instructions to Part II, A, should remind organizations that if the CEO / ED is a voting member of the board, they should also be marked as a trustee or director.

14. Sarbanes-Oxley Act Type Disclosures in Part III

The redesign initiates questions about certain practices, but could go further to elicit information the public would need to assess whether the answers are indicative of strong or weak governance. In fact, the revision risks leading to inaccurate conclusions about organizational governance, and therefore undermining its intended goal. We recommend the following questions:

A. Conflict Of Interest

- Does your organization have a conflict of interest policy?
- Does each member of your board and staff receive a copy of it?
- Does your policy require that potential conflicts of interest involving board members or staff be disclosed to the board or its designated committee?
- Does the full board or its designated committee (excluding staff, board members who are staff, and the person with the potential conflict of interest) review potential conflicts of interest?
- If you answer "yes" to the question above, please indicate [in the Description of Transaction or in Additional Explanations] whether or not each transaction was reviewed and the outcome (accepted, rejected, etc.) of the transaction.

To flow smoothly from this last question, this section should probably be moved to before Part II, Section B.

B. Audits

Complete only if your organization has a financial audit.

- Who selects the auditing firm? Board Staff Other (explain:)

- Does the board or a designated committee (audit, finance or executive committee) usually meet with the auditors after the audit has been completed?
- Is the meeting comprised solely of the independent directors (excluding staff and staff who are also board members)?
- Did the auditors give an unqualified opinion? If not, please explain.

15. Single Audit Act and Internal Control Information

(We request that the IRS expand the financial reporting-related questions to reflect data already collected by the Census Bureau on the results of A-133 (Single Audit Act) audits. First, offer a fourth choice under question 8 for firms with A-133 audits. These firms could be asked to attach their SF-SAC Form that provides key specifics on the A-133 audit. (See: <http://harvester.census.gov/fac/collect/2004FormAndInstruct.pdf>.) The SF-SAC form contains the following important questions:

For nonprofits that check compilation, review, audit, or A-133 audit in Question 8

- Name of CPA firm
- Has the CPA firm changed since last year?
 - Yes
 - No

For nonprofits that check audit or A-133 audit in Question 8

- Type of audit report:
 - Unqualified opinion
 - Qualified opinion
 - Adverse opinion
 - Disclaimer of opinion
- Is explanatory language warning that there is a concern about the organization's ongoing viability ("going concern language") included in the audit report?
 - Yes
 - No

For nonprofits that check A-133 audit in Question 8

- Is a reportable condition disclosed?
 - Yes
 - No
- Is any reportable condition reported as a material weakness?
 - Yes
 - No
- Is a material noncompliance disclosed?
 - Yes
 - No

16. Compensation Issues

We recommend the following changes:

- Part I: Remove line 6 (number of employees with compensation more than \$100,000) from page one.
- Part II: Distinguish voting vs. nonvoting members of board.
- Part II. Require a field indicating the number of weeks or months worked per year, so users have the correct denominator when assessing compensation levels in Part II and Schedule J. (A less preferable option is to simply include a “partial year” checkbox.)
- Part II, Column E: Write instructions so that board members do not disclose salaries but instead the amount paid by the nonprofit to related organization, e.g., the board members’ employer. The filer could be asked to explain the role of the board member in providing these compensated goods or services.
- Schedule J: Exclude nontaxable expense reimbursable from the column F Total.

Form **990**

Return of Organization Exempt From Income Tax

Under section 501(c), 527, or 4947(a)(1) of the Internal Revenue Code (except black lung benefit trust or private foundation)

20XX

Open to Public Inspection

Department of the Treasury
Internal Revenue Service (77)

The organization may have to use a copy of this return to satisfy state reporting requirements.

A For the 20XX calendar year, or tax year beginning		, 20XX, and ending	, 20		
B Check if applicable: <input type="checkbox"/> Address Change <input type="checkbox"/> Name Change <input type="checkbox"/> Initial Return <input type="checkbox"/> Termination <input type="checkbox"/> Amended Return <input type="checkbox"/> Application pending	Please use IRS label or print or type. See Specific Instructions	C Name of organization			
		Number and street (or P.O. box if mail is not delivered to street address).		Room/suite	
		City or town, state or country, and ZIP + 4		E Telephone Number	
				()	
F Website:		H Accounting Method:			
		<input type="checkbox"/> Cash <input type="checkbox"/> Other <input type="checkbox"/> Accrual			
G Enter amount of gross receipts \$		I Books			
		In care of			
		Located at			
J Organization type (check only one) <input type="checkbox"/> 501(c) () (insert no.) <input type="checkbox"/> 4947 (a)(1) or <input type="checkbox"/> 527		Telephone Number ()			
K Year of Formation:		L State of legal domicile			

Part I Summary

Activities	1 Briefly describe the organization's exempt purpose and accomplishments. (See Part IX for details).		
	2 Check this box <input type="checkbox"/> if the organization discontinued its operations or disposed of more than 25% of its assets and attach Schedule N.		
Revenues	3 Contributions and grants (Part IV, line 1g, column (A))	Prior year	This year
	4 Program service revenue (Part IV, line 2g, column (A))		
	5 Membership dues and assessments (Part IV, line 3, column (A))		
	6 Investment income (Part IV, line 11, column (A))		
	7 Other revenue (Part IV, line 15, column (A))		
	8 Total revenue (add lines 4 through 8, must equal Part IV, line 14, column (A)) (See Part IV for analysis of income-producing activities and Schedule G for Gaming and Fundraising Activity)		
Expenses	9 Program service expenses (Part V, line 24, column (B))		
	10 Management and general expenses (Part V, line 24, column (C))		
	11 Fundraising expenses (Part V, line 24, column (D))		
	12 Total expenses (must equal Part V, line 24, column (A)) See Part V.		
Net Assets or Fund Balance	13 Excess of revenue over expenses (line 8 minus line 12)		
		Beginning of Year	End of Year
	14 Total assets (Part VI, line 17)		
	15 Total liabilities (Part VI, line 27)		
	16 Net assets or fund balances (line 14 minus line 15) See Part VI.		
More Information	17 Enter the number of members of the governing body (Part III, Line 1a)	17	
	18 Enter the number of independent members of the governing body (Part III, Line 1b)	18	
	19 Enter the total number of employees (Part VIII, Line 9a)	19	
	20 Enter the estimated number of volunteers the organization had during the year	20	
	21 Enter officer, director, trustee, and other key employee compensation (Part V, Line 5, column (A))	21	
	22 Divide line 21 by line 12 (Also see Part II and Schedule J for details).	22	%
	23 See Parts VII and VIII for listings of schedules and returns that may be required plus general information.		

From: [Wasson, Russell](#)
To: [*TE/GE-EO-F990-Revision;](#)
CC:
Subject: NRECA"s Comments on the Redesigned Form 990
Date: Friday, September 14, 2007 5:17:40 PM
Attachments: [NRECA Final Sept 14.doc](#)

Attached you will find a copy of our comments. If you have any questions, please do not hesitate to call.

Russ

<<NRECA Final Sept 14.doc>>

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September 14, 2007

Form 990 Redesign
ATTN: SE:T:EO
1111 Constitution Ave., N.W
Washington, DC 20224.

Via email:

The National Rural Electric Cooperative Association (“NRECA”) is the not-for-profit national service organization representing approximately 930 not-for-profit, member-owned rural electric cooperatives. The great majority of these cooperatives are tax-exempt distribution cooperatives that provide retail electric service to over 40 million consumer-owners in 47 states. NRECA members also include 65 generation and transmission cooperatives that supply wholesale electric power to their distribution cooperative member-owners.

On behalf of our membership, we are responding to the request for comments.

Introduction

NRECA strongly supports the Internal Revenue Service (“Service”) in its efforts to revise the Form 990 to facilitate accurate, complete, and consistent reporting by tax-exempt organizations. We believe that the revised Form 990 is a significant step toward achieving that goal. In particular, we commend the segregation of information relevant to certain types of tax-exempt organizations. Unlike many tax-exempt organizations, rural

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Comments Related to the Form 990 Instructions

On page 14 of 47, the description of the box regarding **Termination** is not completely applicable to a tax-exempt rural electric cooperative. A rural electric cooperative tax-exempt under section 501(c)(12) which fails the annual 85% member income test for maintenance of exempt status would voluntarily comply by filing Form 1120 as a taxable pre-1962 tax law cooperative and would typically not file another Form 990 until it met the test for exemption. Consequently, the concept of revocation of exempt status by the service is not generally applicable to tax-exempt electric cooperatives. Of course, if an exempt electric cooperative liquidates, dissolves, or significantly disposes of its assets, then this would constitute a “termination”.

On page 16 of 47, **Part II Compensation and Other Financial Arrangements with Officers, Directors, Trustees, Key Employees, Highly Compensated Employees, and Independent Contractors**, we applaud the use of **Form W-2 and Form 1099** to calculate the compensation of key employees and directors. This approach will greatly simplify compliance and will ease the administrative burden in an area that has been subject to much misunderstanding and inconsistent application over the years. We wish to point out, however, that in the case of rural electric cooperatives with fiscal year-ends, that the instructions should indicate that the compensation to be reported should be based upon the most recently filed Form W-2 or Form 1099.

Also, on page 16 of 47 Column (A): we oppose the use of city and state of residence for employees and directors whose income is disclosed in Part II. For a private business entity, such as a rural electric cooperative, **we firmly believe that the proper address to be used for employees and directors should be the address of the cooperative and we urge the Service to adopt this approach rather than listing the city and state of employees and directors that are disclosed in Part II. We are very concerned with making available to the public the city and state of residence of our key employees and directors since, in most cases, it would not be a difficult task for someone to determine the street address and we firmly believe that such disclosure is a violation of their right of privacy.**

On page 28 of 47, **Management and General Expenses**: We wish to point out that rural electric cooperatives prepare financial statements in accordance with Generally Accepted Accounting Principles (“GAAP”). **It would be helpful to our membership to include a statement that private, noncharitable entities which prepare GAAP-based financial statements may follow that financial reporting methodology for purposes of Form 990.** This would greatly facilitate compliance and uniformity of disclosure of information in the case of rural electric cooperatives and would ease the administrative burden of compliance. **It is very difficult for a private, noncharitable enterprise to attempt to “shoehorn” its financial statement information to fit in the syntax of the Form 990 which seems to be focused on charitable organizations. Perhaps a new**

Form 990 for tax-exempt private, noncharitable enterprises would be more useful to the Service. We suspect that, at a minimum, such a form would provide the Service with more consistent reporting of information. When using the current form, noncharitable entities must make arbitrary decisions where to place information which does not seem to “fit” the categories provided which we suspect contributes to a great deal of inconsistency in reporting.

Page 32 of 47 of the instructions related to **Part V line 5 Compensation** requires disclosure of total compensation in Column A. Compensation for this purpose is essentially the sum of all payments made by the cooperative to or on behalf of an applicable employee or director. It is difficult to imagine how or why such a number would be useful, particularly since it will not agree with any other compensation information in Form 990. Further, this ill-defined concept of compensation greatly increases the cost of compliance and significantly increases the administrative burden as aggregating such disparate forms of payments is very time consuming. We cannot imagine any benefit to disclosure of aggregate payments in Column A by a private, noncharitable, membership organization. We believe that such disclosure is duplicative of that required to be disclosed in Part II and is unduly burdensome. **We recommend that private, noncharitable entities be excluded from Part V entirely. Alternative, we would suggest that the total amounts reported in Column A by rural electric cooperatives be related to the amounts reported on Form W-2 or Form 1099.**

Having two different definitions of compensation in the new Form 990 is not helpful, in our opinion and will lead to higher costs of compliance and inconsistent reporting on Form 990 and will compromise the stated objectives of the new Form 990 project of enhancing transparency, promoting compliance and easing the administrative burden of completing the form. We believe that the expanded definition of compensation should be limited to those individuals whose information is disclosed in Schedule J Supplemental Compensation Information.

Comments Related to the Core Form 990

Part I Summary Page

Activities and Governance (lines 3-9)

NRECA also objects to the disclosure of gross and net unrelated business revenue on the summary page. We believe that such amounts should be disclosed elsewhere in the core form, such as in Part IV where unrelated business income is required to be reported.

Part III Statements Regarding Governance, Management and Financial Reporting

Line 3b asks how many transactions were reviewed under the organization’s conflict of interest policy (assuming the filer answered yes to 3a that they had such a policy). We do

not believe this question as drafted will provide helpful or relevant information to the IRS or the public, but will instead likely produce answers that are misleading or confusing. For example, if **no conflict transactions arose, a response of “zero” on line 3b may be perceived negatively. Conversely, a high number of transactions may also give a negative perception, when the number merely reflects that the policy was written broadly, thus triggering frequent reports of de minimis conflicts that require no further action.**

Lines 4 and 5 ask whether a whistleblower policy and records management policy has been adopted. **The instructions erroneously state that the Sarbanes-Oxley Act requires certain filers to adopt such policies.** Sections 802 and 1102 of the act, codified at 18 U.S.C. § 1519 and § 1512, make it highly advisable to have such policies as evidentiary proof of compliance, but we are not aware of any “mandate” in Sarbanes-Oxley Act to adopt any such policies.

Line 6 asks about "contemporaneous" preparation of board and committee meeting minutes, with the Instructions defining contemporaneous as within 60 days of "final action" being taken. The term “final action” is not defined. Does final action refer to actions taken by the board (such as votes) during the meeting? Or does it just mean approval of the minutes, or is something else intended? **Perhaps a more useful approach would be to define contemporaneous as minutes of the prior meeting being approved by the board or committee at its next scheduled meeting.**

Line 9 asks about the existence of an audit committee. Many rural electric cooperatives do not have separately constituted audit committees, rather, the entire board serves as the audit committee to hire and oversee the work of the external independent auditor. **We believe that the instructions should make clear that the entire board or a committee by another name can function as the audit committee so long as it fulfills the same essential duties of an audit committee (which duties should be defined in the Instructions to provide clarity to filers.)**

Line 10 asks whether the governing body reviewed the Form 990 prior to filing but the term “review” is not defined. We agree that an organization’s governing body has an oversight role regarding compliance, but board members may not have the necessary background or expertise to “review” Form 990 in a manner similar to a tax professional. Alternatively, **perhaps the question could be rephrased to ask whether the board received a copy and discussed the current Form 990 disclosures with the staff that were responsible for preparation of the form.**

Line 11 asks about public availability of various documents. **While the members of a rural electric cooperative may have statutory or common law rights to certain of these documents, the general public may not have a legal right to some of these documents.** However, we suspect that a N/A response would be viewed negatively. **This is yet another instance of the difficulties faced by private, noncharitable**

enterprises using a form which seems to be primarily designed for charitable organizations.

Part IV Statement of Revenue and Part V Statement of Functional Expense

We believe that the use of percentages related to revenues and expenses should be restricted to the appropriate portion of the form in which the body of detailed financial information is disclosed.

Part VII Statements Regarding General Activities

Line 11 asks the question “Does the organization have a written policy or procedure to review the organization’s investments or participation in disregarded entities, joint ventures, or other affiliated organizations (exempt or non-exempt)?” However, we note that there are no instructions given for line 11. **We encourage the Service to include an option of N/A since in this case it could appear that answer of “no” may be construed to indicate no such policy when the actual case may be that the entity has no such arrangements, and therefore a policy is not necessary.**

Line 12 asks the question “Does the organization have a written policy that requires the organization to safeguard its exempt status with respect to its transactions and arrangements with related organizations?” **Perhaps the question could be altered to include policies “and/or other means, such as contract provisions” since organizations may use different methods to accomplish the same safeguards.**

Schedule J Supplemental Compensation Information

Generally, while we understand the desire of the Service to collect information related to compensation of individuals who may be, or were, employed by or directors of tax-exempt organizations, particularly given the abuses in this area which have occurred in the past, as a practical matter, expanding the definition of compensation for this purpose will greatly increase the administrative burden of compliance for any rural electric cooperative that must complete Schedule J. As we have stated previously, rural electric cooperatives are private, noncharitable, membership organizations and we believe that the burden of data gathering regarding compensation requested in Schedule J is disproportionately greater for our membership than the burden placed on public companies in meeting the compensation reporting requirements of the Securities and Exchange Commission.

We wish to point out that the extensive template of compensation in the Schedule J instructions includes at least one item that the Schedule J instructions indicate should be reported in Part II column D or E as reportable compensation but the type of “compensation” denoted is usually not reportable by the cooperative for income tax purposes. For example, third party sick pay is typically reportable by the provider, not the rural electric cooperative. Indeed, the cooperative typically has no idea of the amount

of third party sick pay a provider pays to an employee making compliance with this element of Schedule J, as a practical matter, impossible.

Schedule N Liquidation, Termination, Dissolution, or Significant Disposition of Assets

We urge the Service to make it clear in the instructions for Schedule N that asset conversion transactions, which are, by statute, excludible by rural electric cooperatives from the annual test for maintenance of exempt status, be removed from Schedule N. Such transactions typically occur as a result of a natural disaster such as a hurricane, tornado, or ice storm. In each case, the electric system is rebuilt, but we do not believe it is reasonable to include involuntary conversions of this nature in the scope of Schedule N and we strongly encourage the Service to make this clear in the instructions. Otherwise, a rural electric cooperative which is already struggling to overcome a disaster would be significantly burdened with additional work to comply with the Schedule N disclosure requirements.

Comments Related to the Glossary

The addition of a Glossary should be helpful to filers to clarify specific terms, but more cross-references in the Instructions are needed to direct filers to relevant definitions. Currently, the Glossary is only specifically referenced five times in the Instructions. The IRS may also wish to consider publishing the Glossary and Instructions together in one document to further aid filers.

NRECA would also like to offer the following specific comments regarding defined terms contained in the Glossary:

The Glossary currently defines “control” for a tax-exempt organization as the power to appoint a majority of the organization’s directors or trustees, or a situation in which a majority of the controlled entity’s directors or trustees are trustees, directors, officers, employees, or agents of the controlling organization.

Control may be indirect. In other words, if the organization controls Organization A that in turn controls (under the definition of control above) Organization B, the organization will be treated as controlling Organization B. There may be multiple levels of controlled organizations.

Part II of the Glossary could extend the concept of “business relationship” to a tax-exempt rural electric cooperatives key employees and directors. If this is what was intended, we do not believe that key employees and directors should be deemed to have a “business relationship” with the cooperative and we urge you to clarify the intent of this definition in the Glossary.

We are particularly concerned with clarifying the definition of “Brother/Sister” related organizations. For example, because a generation and transmission cooperative and a statewide electric cooperative association with identical members are “controlled by the same person or persons,” they may be Brother/Sister related organizations. Based upon the definition of “control,” if a “majority” of a G&T members and statewide association members or directors are the same, they may be Brother/Sister related organizations. Since rural electric cooperatives and their related organizations are membership organizations with democratically elected boards with each board member having one vote, many of our related organizations include common board members but no single entity or person could be said to “control” the organizations in the manner in which control is assumed in the Glossary to occur for a tax-exempt entity. **We believe that the concept of control for private, noncharitable enterprises should be the traditional definition of control for taxable entities-that is-ownership of at least 50% of the voting power of common stock. We urge the IRS to adopt this approach; otherwise, many of our members will be burdened with reporting related organization information when they share common board members. Many cooperatives are members of federated systems of cooperatives but since each individual cooperative typically has one vote, there are very few instances in which “control” is exercised in a traditional corporate sense. Revising the definition to 50% of voting power would capture any instances in which one entity “controlled” another and would greatly ease the administrative burden which the current proposed definition would impose upon our membership.**

Additionally, we believe that clarity is needed in the definition of “independent contractor” in the Glossary as well as in the instructions (Part II of the Glossary and page 19 of 47 in the Instructions). That is, what type of entities should be considered “independent contractors”? Should this definition be synchronized with the definition of independent contractors for purposes of Form 1099 reporting? **We encourage the IRS not to develop multiple definitions of key terms in the tax law. We believe that such an action would lead to much confusion and inconsistent reporting on the part of all Form 990 filers.**

Part VIII of the Glossary as well as the Instructions refer to the term “contribution” which we believe is meant to be the term “charitable contribution” but we wish to point out that the term “contribution” could extend to many different forms of payment and we are not sure that this was the intent of the draft.

Conclusion

NRECA appreciates the opportunity to comment on the new draft form 990. We think, on the whole, the proposed draft generally achieves the Service’s stated goals of enhancing transparency and promoting compliance. **However, we are concerned over certain areas mentioned in our comment letter which we believe will significantly increase the administrative burden of compliance with no apparent, in the case of a rural electric cooperative, corresponding public benefit.**

If you have any questions or wish to discuss our comments further, please call Russ Wasson (703-907-5802) or Ty Thompson (703-907-5855) and we will be pleased to assist the Service in any capacity.

s/Russ Wasson
Director of Tax, Finance and Accounting Policy

s/ Tyrus Thompson
Senior Corporate Counsel

From: [Kay Guinane](#)
To: [*TE/GE-EO-F990-Revision;](#)
CC:
Subject: ATTN: SE:T:EO Form 990 Comments
Date: Friday, September 14, 2007 5:28:15 PM
Attachments: [Comments on Proposed Revisions to IRS Form 990.doc](#)

Attached please find the comments of OMB Watch regarding proposed changes in IRS Form 990. Please let me know if you have any trouble downloading the comments, or have any questions.

Kay Guinane

Combined Federal Campaign #10201



September 14, 2007

Lois G. Lerner, Director, Exempt Organizations Division
Ronald J. Schultz, Senior Technical Advisor to the Commissioner of TE/GE
Catherine E. Livingston, Deputy Associate Chief Counsel (Exempt Organizations)
Internal Revenue Service
1111 Constitution Ave. NW
Washington, DC 20224

Form 990 Redesign, ATTN: SE:T:EO

Re: Comments on Proposed Revisions to IRS Form 990

OMB Watch is a nonprofit, charitable organization that promotes government accountability and citizen participation at the national level. As part of our work, we work closely with nonprofit organizations across the country and encourage their participation in governmental decision-making, which includes advocacy, lobbying activities, and nonpartisan voter participation. We advocate for governmental policies that reduce the burden for nonprofits to engage in public policy and help to make nonprofit sector activities more transparent and accountable. It is for these reasons we appreciate the opportunity to comment on proposed changes to IRS Form 990. These changes will have an impact on organizations like ours that must complete Form 990 every year, and also members of the public that must rely on Form 990 as a source of information on the nonprofit sector and individual organizations.

Our comments are supportive of the IRS' goals of enhancing transparency for the IRS and the public, promoting compliance with IRS rules and minimizing the burden on nonprofits. We focus on the sections that relate to civic participation through nonprofit organizations, especially 501(c)(3) organizations. The fact that we do not comment on other issues does not imply support or opposition to the proposals.

In summary, we recommend that the IRS:

1. Drop the requirement to report lobbying expenses for non-employees as called for in Core Form Part V Line 11(d). The IRS has not justified why it would impose new ways of allocating lobbying costs when it already collects detailed information through Schedule C. If IRS does not agree to this suggestion, it must revise the overly broad definition of lobbying in Core Form Part V Line 11(d) to be consistent with the tax code definition of lobbying.
2. Separate Schedule C into two parts: one for 501(c)(3) organizations on lobbying activities, and another for other types of nonprofits that covers both political campaign and lobbying activities. Additionally, the IRS should make definitions in the instructions for the Core

Celebrating 20 years: Promoting Government Accountability and Citizen Participation - 1983 - 2003.

1742 Connecticut Ave NW
Washington, DC 20009



tel: 202.234.8494
fax: 202.234.8584



email: ombwatch@ombwatch.org
web: <http://www.ombwatch.org>

Form and Schedule C internally consistent with regard to definitions of direct and indirect political campaign activities so that is clear in all parts that nonpartisan voter activities are not to be reported.

3. Drop the Schedule C requirement to report volunteer hours for political campaign activities. The IRS provides no justification for seeking such information.
4. Drop the requirement for certain charities to identify whether their lobbying activities have resulted in exceeding the substantial part test. Given there is no clear definition of when an organization exceeds the substantial part test, Part II-B Line 2a of Schedule C is an unfair and inappropriate question.
5. Clarify definitions of affiliated and related organizations in Schedule C so that the public has a better understanding of money that may be transferred from one affiliated group to another as well as who is undertaking lobbying activities.
6. Include a separate box in the Core Form header for "doing business as" names so that such names are fully searchable.
7. Take the time necessary to produce a useful and truly improved Form 990, and not let the schedule be driven by other factors. Based on feedback from this draft, we encourage IRS to provide another draft of the Form 990 for public comment.

Our detailed comments are below:

1. Disclosure of Non-Employee Lobbying Expenses in Core Form Part V Line 11(d)

Core form Part V Line 11(d) requires reporting of lobbying expenses for non-employees, and, for 501(c)(3) and 501(c)(4) organizations, a breakdown of this cost into three categories: program service expenses, management and general expenses, and fundraising expenses.

OMB Watch sees no reason to require such disclosure given nonprofits must provide detailed disclosure through Schedule C if they lobby. Moreover, most nonprofits do not currently record lobbying expenses in the functional categories used in Part V. As a result, this requirement will force nonprofits to keep additional records on lobbying activities to categorize whether they are program, general and management, or fundraising expenses. Not only does this impose an unnecessary burden on nonprofits, it is unclear how to allocate such expenses.

For example, when OMB Watch lobbies to protect our organization's right to lobby, is that a management and general expense? Or is it a program service expense? And if we promote the work we are doing and it generates contributions, does it need to be allocated to a fundraising expense? There is no guidance about how nonprofits should break down these expenses and we can see no useful purpose the proposed breakdown would serve.

Additionally, we are deeply concerned about what data IRS seeks on "lobbying." On page 33, the draft instructions say, "Enter amounts of lobbying *and legislative liaison services*. Include amounts for lobbying before federal, state or local *executive*, legislative or *administrative bodies*." (emphasis added) This expansive definition of lobbying is inconsistent with the tax code and IRS regulations governing 501(c)(3) organizations. First, IRS rules do not define "legislative liaison services." Furthermore, this is inconsistent with the data on lobbying activities provided in Schedule C. As a

result, any information collected will not provide consistent or useful information to the public. But the larger problem is that these activities are outside the IRS definitions of lobbying. There is no reason for the IRS to collect the information, because it does not have a regulatory purpose.

For 501(c)(3) organizations, advocacy before the executive branch and administrative bodies is not considered lobbying under the tax code or IRS regulations, unless the executive is being asked to take action with respect to legislation, such as use of the veto power. As a result, 501(c)(3) organizations do not track this information and should not be required to report it. The IRS should not have an interest in collecting this information, since there are no limitations on how much administrative advocacy nonprofits can engage in. Requiring this information on Form 990 would impose a significant new tracking and reporting burden on nonprofits without a legitimate regulatory purpose.

Because the definition of lobbying here is broader than required by law, the information would be inconsistent with what is reported about lobbying in Schedule C. On page 4 of the Schedule C instructions, the IRS says lobbying "does not include actions by executive, judicial or administrative bodies." This definition is consistent with IRS regulations, but inconsistent with what is being sought in Part V of the Core Form.

Again, we strongly urge the IRS to remove lobbying disclosure from Part V of the Core Form. If IRS is not willing to do so, it must provide a definition of lobbying that is limited to legislative activity as defined in Schedule C and not require a breakdown of lobbying consultant costs into functional expense categories for 501(c)(3) and 501(c)(4) organizations.

2. Separate Schedule C into Two Parts

Proposed Schedule C is a trap for the unwary. Mixing lobbying and political campaign activities in one form is likely to cause substantial confusion, especially when the form does not clarify what direct and indirect political campaign activities are. 501(c)(3) organizations are prohibited from engaging in electioneering activities – supporting or opposing a candidate for elected office. Thus, it is unclear what charities would need to report on various parts of the proposed Schedule C. The likely result is that permissible nonpartisan voter education and mobilization activities will be reported here, generating unnecessary burdensome disclosure. The information is inappropriate for regulatory purposes and would only likely lead to IRS investigations that waste time and energy for all concerned.

The public is also likely to be confused by this combined schedule. Many of us in the nonprofit sector find it hard enough to explain the differences between different types of nonprofit organizations. We often note that charities cannot be engaged in electioneering activities. Yet this form will lead some in the news media and the general public to be confused about the role charities play.

The best solution is to create two separate schedules: one for 501(c)(3) organizations that deals with lobbying activities, and another for all other nonprofits that addresses political campaign activities and lobbying activities.

If the IRS does not separate the proposed Schedule C, it should change the instructions at the top of the form, which says "501(c)(3) organizations: complete Parts I-A and B. Do not complete Part I-C." Part I-A deals with "direct and indirect political campaign activities;" Part I-B deals with excise

taxes. Instead, the top of the form should say, "501(c)(3) organizations: complete only Part I-B. Do not complete Parts I-A and I-C."

Additionally, the header description by Part I-A should be changed to follow the same language used in the header description by Part I-C: "To be completed by all organizations exempt under 501(c), except section 501(c)(3): (See Schedule C instructions for details.)" We would also encourage the IRS to add: "501(c)(3) organizations are prohibited from intervening in elections for or against candidates for office." This statement should also be in the Core Form Part VIII Line 1.

In the last sentence on pages 3 and 4 of the instructions for Schedule C, the IRS states that nonpartisan electoral activity should not be reported here. We suggest this sentence be moved to the top of the paragraph. The Schedule and the instructions should be as clear as possible that nonprofit organizations are not required to report on nonpartisan voter education and mobilization activities.

3. Drop the Schedule C Part I-A Line 1 requirement to report volunteer hours for political activities.

Part I-A Line 1 of proposed Schedule C asks for the number of volunteer hours engaged in direct and indirect political campaign activities. This requirement has no regulatory basis that we can see, is impractical if not impossible to comply with, and would discourage civic participation by forcing nonprofits and their volunteers to keep time sheets.

We recommend that this line be dropped, since it does not provide information relevant to any IRS enforcement powers. If it is not dropped, it should be changed to a simple "yes" or "no" question, such as, "Did the organization use volunteers for direct and indirect political campaign activities?"

4. Eliminate Schedule C Part II-B Line 2a

The IRS proposes to ask 501(c)(3) organizations that have not chosen to use the expenditure test under IRC 501(h) whether or not their lobbying activities make them ineligible for continued exempt status under 501(c)(3). This is an unfair question, since these organizations have no clear definitions or thresholds to make this judgment. Their lobbying is only limited by the vague statutory language that says "no substantial part" of their activities should be attempts to influence legislation. The instructions provide no guidance on what the IRS considers substantial.

This question should be eliminated. If, on the basis of information provided in Part II-B Line 1, the IRS believes there is a question of whether or not the organization has exceeded this undefined lobbying limit, it should conduct an examination and make a determination.

The question could be replaced by one that says, "Has the organization been found to have engaged in substantial lobbying?" Then it could go on to ask for reporting of tax incurred under Section 4912 and filing of Form 4720 as it does in Lines 2b-d. This would provide useful information to the public.

5. Clarify Definitions of Affiliated and Related Organizations and Provide More Information About Such Relationships

Proposed Schedule C Part II-A asks if the filing organization belongs to an affiliated group, and a follow-up question asks if the filer is an affiliated group, does it have "limited control." Pages 6-7 of

the instructions provide a clear definition of Affiliated Groups and Limited Control. Even with these definitions, the instructions are murky about how to complete Part II-A. Does this refer to a national organization with chapters at the state or local level, to 501(c)(3) organizations with related 501(c)(4) organizations or both? Is it practical to ask an organization with a national affiliation to include total expenses for the entire network of groups?

In addition, the instructions for this section tell filers to attach a schedule with information on the affiliates. We are concerned that this information will not be captured by a search engine that provides the public with Form 990 information. As a result, at least key items should be included on the Schedule C itself. In particular, the name and employee identification number should be on the Schedule C.

The Core Form asks for information about affiliates or related organizations in two places: Part III Line 7 and Part V Line 21. The instructions do not have any information defining affiliates or related organizations for Part III Line 7. The instructions for Part V Line 21 also lack definitions, and as a result are confusing. Is the use of "affiliates" in the Core Form the same or different than the use of "affiliated groups" in Schedule C?

In addition, the core form does not have a place where the identity of affiliated organizations is reported. We think this is a mistake.

It is important to avoid the appearance of impropriety for interlocking or affiliated groups, such as with 501(c)(3) and 501(c)(4) organizations. To ensure greater transparency and accountability, it is important for the public to be able to identify transactions between related affiliations. Thus, the Form 990 should be strengthened in ways that help the public understand any transfer of funds within such organizations, and if lobbying by one organization has a benefit to the other.

6. Include a Separate Box in the Core Form Header for the Organization "doing business as"

The instructions for the Core Form header Item C instruct filers to give the legal name of the organization, as well as any "doing business as" (d/b/a) name. We suggest a separate box be used for d/b/a names, so that the information can be picked up in an electronic search.

Our organization is an example. We are incorporated as the "Focus Project, Inc." but do business as "OMB Watch." If a member of the public wishes to find our Form 990 through an electronic search using "OMB Watch," he or she is not likely to be successful today. Under the proposed Core Form, it would be equally difficult, as we would report on one line "Focus Project, Inc. d/b/a OMB Watch." While some electronic search mechanisms would catch "OMB Watch" a more sure-footed way is to require a separate line or box for d/b/a.

7. Take the Time Needed to Get it Right

The IRS is proposing to implement changes to Form 990 on an expedited schedule. According to news reports, this is driven by the IRS technology staff schedule. This puts the cart before the horse. Form 990 has not been changed since 1979, and it may be another 25 years or more before it is revised again. If nonprofits and the public are going to have to live with the new Form 990 for a long time, the IRS should take the time necessary to produce a useful and truly improved Form 990.

We suggest that the IRS provide a new draft of the Form 990 based on comments the agency receives from this proposal. The second draft should allow for public comment before moving to finalize the form.

Thank you for considering OMB Watch's comments. If you would like further information, please do not hesitate to call.

Sincerely,

Handwritten signature of Gary D. Bass in cursive script.

Gary D. Bass
Executive Director

Handwritten signature of Kay Guinane in cursive script.

Kay Guinane
Director, Nonprofit Speech Rights

From: [Heather Noonan](#)
To: [*TE/GE-EO-F990-Revision;](#)
CC: [Charles Irmiter;](#)
Subject: Comments Regarding Redesigned Form 990
Date: Friday, September 14, 2007 6:11:18 PM
Attachments: [League 990 Comments 9 14.pdf](#)

Attached, please find comments of the American Symphony Orchestra League, filed in response to the draft re-designed Form 990.

Thank you for this opportunity to comment.

Sincerely,
Heather Noonan
Vice President for Advocacy
American Symphony Orchestra League
(202) 776-0215



September 13, 2007

Internal Revenue Service
Form 990 Redesign
ATTN: SE:T:EO
1111 Constitution Ave., N.W.
Washington, DC 20224

Re: Draft Redesigned Form 990

The American Symphony Orchestra League respectfully submits these comments in response to the draft redesigned Form 990 released by the Internal Revenue Service (IRS) for public comment on June 14, 2007. Founded in 1942, and chartered by Congress in 1962, the American Symphony Orchestra League leads, encourages, and supports America's orchestras while communicating to the public the essential value and cultural importance of orchestras in their communities and the vitality of the music they perform.

The League's membership encompasses nearly 1,000 member symphony, chamber, youth, and collegiate orchestras of all sizes, and links a national network of thousands of instrumentalists, conductors, managers, board members, volunteers, staff members, and business partners. Orchestras exist in all 50 states, in virtually every community. We estimate that there are approximately 1,800 orchestras in the United States, with annual budgets ranging from less than \$50,000 to more than \$70 million. As members of the nonprofit charitable sector, orchestras depend upon private philanthropy and civic support, and are committed to high standards in public accountability.

We are grateful to the IRS for this opportunity to comment. We support the Service's goals of enhancing transparency, promoting tax compliance, and minimizing the burden on the filing organizations. The American Symphony Orchestra League is an active member of Independent Sector, the leadership forum for charities, foundations, and corporate giving programs. We concur with the comments submitted by Independent Sector, which comprehensively respond to the proposed Form 990 revisions, and provide the following brief comments as a supplement.

Core Form: Summary Page

The proposed summary report would require several out-of-context comparative percentages of expenses and revenue and other financial activity as "efficiency" indicators. In particular, the revised Form would require reporting total expenditures as a percentage of net assets. Such percentages may vary greatly for a single orchestra from year-to-year

and among orchestras in a single year. Orchestras that are building resources toward construction of a new hall or other significant long-term projects will likely report expenditures as a lower percentage of net assets in a given year. Large multi-year grants may also have a distorted impact.

The Service has suggested that it aims to boost transparency through Form 990 revisions that will provide a “realistic picture of the organization and its operations, along with the basis for comparing the organization to similar organizations.” We are not aware that any “ideal” percentage has been proven to correlate to an ideal of orchestra “efficiency,” nor do we regard expenditures as a percentage of net assets as an accurate reflection of the public service provided by an orchestra in any given year. Hence, these calculations will not further the Service’s aim to provide useful comparative information.

We strongly recommend removing percentage calculations from the draft Form 990 summary page.

Schedule D: Supplemental Financial Statements

The draft revised core Form 990 prompts organizations to complete Schedule D Part X if the organization “maintain(s) collections of works of art, historical treasures, or other similar assets for public exhibition, education, or research in furtherance of public service rather than financial gain.” While it is likely obvious that museums will be impacted by this reporting requirement, we would like to point out that this requirement may also extend to others in the nonprofit sector, including orchestras. The purpose of the proposed questions regarding collections is unclear, and the draft reporting requirements may present an unintended burden to filing organizations.

The use of historically significant music-related collections and material is of interest to a broad range of orchestras. The League serves nearly 1,000 member symphony, chamber, youth, and collegiate orchestras of all sizes. Of these members, many maintain historical collections of manuscripts, photographs, and other material, and 30 orchestras in communities large and small have identified a specific individual that serves as an archivist or historian. Beyond this specific archival activity, most orchestras maintain a music library, and more than 550 orchestras have identified at least one individual that carries the responsibility of being the orchestra librarian.

Musicians, scholars, and the public rely on original manuscripts and supporting material to reveal the artistic underpinnings of existing compositions and inspire the creative works of emerging artists. When collected by orchestra archives, music schools, music libraries, or other cultural institutions, original musical works and related materials produced by artists can be safely preserved and made available to the public.

Many of these assets are difficult to value and are not traditionally capitalized by orchestras. Practices for documenting the collections held by orchestras vary from institution to institution. We join the broader cultural community and the nonprofit sector in urging the IRS to drop this portion of Schedule D.

Thresholds for Filing Requirements

We thank the IRS for the opportunity to comment on the current thresholds for requiring organizations to file. Under the current rules, organizations with revenue of \$100,000 or more must file the full Form 990, and organizations with \$25,000 or more in revenue must file the Form 990-EZ. While organizations with less than \$25,000 in revenue are not currently required to annually report to the IRS, as of 2008 these organizations must file the Form 990-N e-postcard, or risk losing their tax-exempt status.

The IRS has asked whether the current minimum threshold for filing the Form 990-EZ should be increased to \$50,000 or a higher level. We heartily endorse raising the minimum threshold for filing the Form 990-EZ, as it would relieve smaller organizations of the filing burden, while allowing them to be on record by filing the Form 990-N. As the current filing limit has not been changed in over 25 years, the value in current dollars would now exceed twice the original \$25,000 amount. We would also recommend regular indexing of the thresholds for both 990-EZ and full 990 filing.

We would also like to take this opportunity to commend the IRS Advisory Committee on Tax-Exempt and Government Entities for recommending, on June 13, 2007, that the IRS establish a voluntary compliance program for organizations that have not filed past Form 990 information returns. The proposed compliance program would allow organizations to submit missing Forms 990, along with any taxes due, without paying penalties for late filing. We encourage the IRS to act on this recommendation. A voluntary compliance program will be a helpful complement to the Form 990-N requirements that take effect in 2008, and would assist compliance as a revised Form 990 is implemented.

Timing for Implementing the Revised Form 990

The IRS has indicated that it plans to implement the revised Form 990 for returns reporting on activities for Fiscal Year 2008. While we commend the Service for undertaking this substantial effort to clarify the reporting process for nonprofit organizations, and to improve the transparency of nonprofit activity, this rapid introduction of a new Form would pose serious challenges to nonprofit organizations. The process of comprehending the new reporting requirements, and adjusting record-keeping accordingly, will require time. We encourage the Service to allow more time for nonprofits to be fully informed of the changes to the reporting process and to adequately plan for compliance with new IRS requirements.

Thank you for the opportunity to comment on the draft redesigned Form 990 and related schedules.

Sincerely,



Henry Fogel
President & CEO

From: [Jon Pratt](#)
To: [*TE/GE-EO-F990-Revision;](#)
CC:
Subject: Comments from Minnesota Council of Nonprofits regarding Form 990
Date: Friday, September 14, 2007 6:22:50 PM
Attachments: [IRS Form 990 Face Sheet.pdf](#)
[990 Comments - Mn Council of Nonprofits.pdf](#)

The Minnesota Council of Nonprofits held two meetings with over 100 member organizations, attorneys and accountants to discuss the draft Form 990, and to develop these comments for the revision process.

Jon Pratt

Executive Director
Minnesota Council of Nonprofits
2314 University Avenue West, Ste 20
St. Paul, MN 55114
651-642-1904 ext. 224
Fax 651-642-1517

www.mncn.org



2413 University Ave W Ste 20
St. Paul, MN 55114
651-642-1904

IRS Form 990 Redesign, SE:T:EO
111 Constitution Avenue NW
Washington, DC 20224

September 14, 2007

To the Form 990 Redesign Team:

The revision of IRS Form 990 provides an opportunity to make the primary reporting and accountability tool for nonprofit organizations more useful and effective for both the public and for state and federal regulators.

The Minnesota Council of Nonprofits held two meetings with over 100 member organizations, attorneys and accountants to discuss the draft Form 990, and to develop these comments for the revision process.

A. Summary Page (Draft Form 990, page 1)

Form 990 begs for a quick way to understand an organization, so the concept of a summary page with key information is a good one. Placing the mission on the front page is a smart change. Nevertheless, the current draft brings in too many extraneous matters, requiring dozens of numbers, ratios and percentages with implied but questionable significance. Many of these calculations, such as lines 8b and 19b, are confusing and produce numbers merely corresponding to total size of organization, implying that smaller organizations allocate large amounts to executive compensation.

In addition, it would be foolish to go to all this work on the next Form 990 and yet fail to take advantage of advances in information technology. Since electronic filing will be required, we suggest using this opportunity to create a more visual and user-friendly form.

Attached is a key part of this comment -- a pdf file showing a suggested alternative for page one (IRS Form 990 Face Sheet.pdf) a *graphical face sheet, making the form more useful and understandable for both the general public and people inside organizations.*

This version would automatically calculate and create a bar chart for last five years expenditures, and pie charts for revenue and expenses, based on numbers entered into the program generating the form. Most importantly, in a single page it would quickly help the reader get an overview and answers to ten of their most important questions:

1. What does the organization aim to do?
2. What does it accomplish?
3. When was it formed?
4. How big is the organization?
5. Is it growing or shrinking?
6. Where does its money come from?
7. On what is its money spent?
8. How many people are on its board and staff?
9. Where are they located?
10. What is their website address? What is their telephone number?

B. Program service accomplishments (Part IX, page 10)

One of the most important types of information tracked and reported by organizations is program service accomplishments. Unfortunately, this draft relegates service accomplishments to the very end, after lengthy recitations of income, assets, expenditures and compensation.

Bringing program service accomplishments forward in the document, such as to the second page, would make the form more useful and balanced.

C. Governance (Part II, page 2, and Part III, page 4)

Many of the questions about governance are inapplicable to small organizations, and while apparently intended to uncover improper relationships, devote disproportionate time and attention to matters which affect a small number of organizations. The form needs to be more selective about the information it seeks, to set some priorities and stick to them.

MCN members with board members involved in criminal justice (such as police officers, judges or past victims of domestic violence) have strong reservations and safety concerns about revealing home cities of board members.

D. Form 990EZ

MCN supports retaining Form 990EZ, to avoid requiring inappropriate and burdensome information (or even rows of blank items) from small organizations. The option to use

Form 990EZ is appropriate to concentrate enforcement and information collection priorities on organizations with the vast majority of financial transactions.

While many other subjects and issues were raised during MCN's public meetings, we are satisfied that these issues have been thoroughly addressed in comments from other national and regional organizations with whom MCN is affiliated.

Sincerely,

A handwritten signature in black ink that reads "Jon Pratt". The signature is written in a cursive style with a large, looping initial "J".

Jon Pratt
Executive Director

Return of Organization Exempt From Income Tax

Under section 501(c), 527, or 4947(a)(1) of the Internal Revenue Code (except black lung benefit trust or private foundation)

2008

Open to Public Inspection

Department of the Treasury
Internal Revenue Service (77)

The organization may have to use a copy of this return to satisfy state reporting requirements.

A For the 20XX calendar year, or tax year beginning , 20XX, and ending , 20

B Check if applicable:

- Address change
- Name change
- Initial return
- Termination
- Amended return
- Application pending

Please use IRS label or print or type. See Specific Instructions.

C Name of organization
Minnesota Council of Nonprofits
Number and street (or P.O. box if mail is not delivered to street address) Room/suite
2314 University Ave W 20
City or town, state or country, and ZIP + 4
St. Paul, MN 55114-

D Employer identification number

36 3501477

E Telephone number

(**651**) **642-1904**

F Name and address of Principal Officer:

G Website: www.mncn.org

I Accounting method:

- Cash
- Accrual
- Other

J Books

In care of **Sondra Reis, Associate Director**

Located at **MCN Office In St Paul, MN**

H Enter amount of gross receipts \$ **2,056,150**

K Organization type (check only one) 501(c) (**3**) (insert no.) 4947(a)(1) or 527

Telephone number (**651**) **642-1904 ext 242**

L Year of Formation: **1987**

Part I Summary

1. Briefly describe the organization's mission: *MCN conducts research and provides management improvement information and training to charitable organizations in Minnesota, advocates for sensible state and federal public policies for nonprofit organizations and the people they serve, and negotiates discounts to strengthen individual nonprofits and the nonprofit sector*

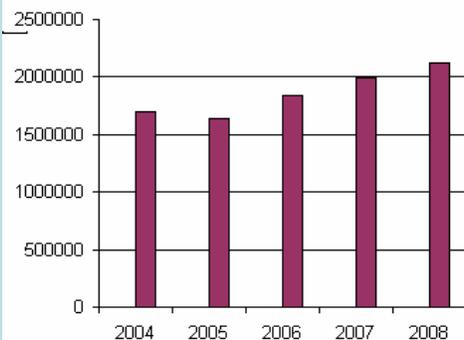
2. Describe the organizations most significant program service accomplishment for the year: *MCN persuaded the Internal Revenue Service to adopt a graphical face sheet as page one of IRS Form 990, making the form more useful and understandable for both the general public and people inside organizations, as the result of public meetings organized by MCN, the Nonprofit Quarterly and other state associations of nonprofits.*

3. Enter number of members of the governing body	21
4. Enter the number of official meetings held by the governing board during the year	6
5. Enter the number of employees	23

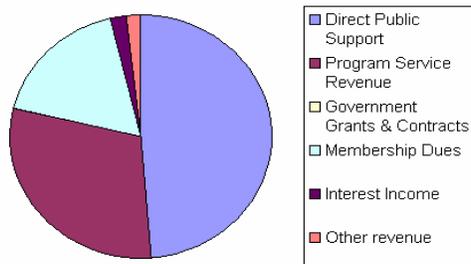
6. Contributions and grants	1,165,233
7. Program service revenue	717,779
8. Membership dues and assessments	425,045
9. Investment income	0
10. Other revenue	37,700
11. Total Revenue (add lines 6 through 10)	2,391,258

12. Program service expense	1,851,790
13. Management and general expenses	215,894
14. Fundraising expenses	158,025
15. Total Expenses	2,225,709
16. Net income (line 11 minus line 15)	165,549

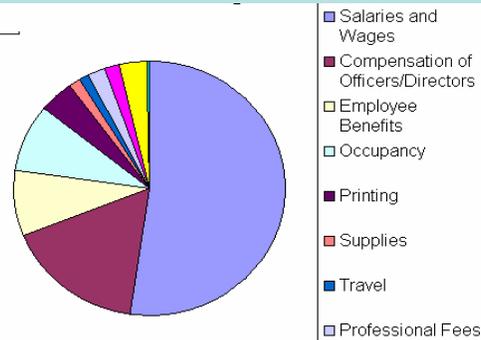
	Beginning of year	End of year
	17. Total assets	1,061,540
18. Total liabilities	136,050	138,010
19. Net assets or fund balances	925,490	987,608



Total expenditures for five most recent fiscal years



2008 Sources of Revenue



2008 Expenditures by Type

From: [VPFinance_Intl](#)
To: [*TE/GE-EO-F990-Revision;](#)
CC:
Subject: Form 990 Revision Comments from SIL International
Date: Friday, September 14, 2007 6:46:49 PM
Attachments: [Form 990 Redesign Comments-SIL.PDF](#)

Eleanor L. Berry CPA
Vice President for Finance
SIL International



*Partners in
Language Development*

September 14, 2007

Internal Revenue Service
Form 990 Redesign, SE:T:EO
1111 Constitution Avenue, NW
Washington, DC 20224

Dear Ms. Lois Lerner:

Thank you for the opportunity to provide comments on the redesign of Form 990. SIL International is an exempt organization which provides language development services in many countries. SIL International studies, documents and develops the world's lesser-known languages. SIL International is currently involved in linguistic investigation in more than 1,300 of these languages. It also has more than 1,000 literacy programs in progress training more than 2 million readers. The organization has published more than 25,000 academic and technical works in its 70 year history. It has over 5,000 staff.

SIL International annually submits Form 990 to the IRS. Our staff reviewed the proposed redesign of Form 990 in light of its potential impact on our ability to provide useful information both to the IRS as it meets its regulatory requirements and to the public as it examines the organization's efforts to overcome illiteracy and poverty worldwide. Below are our specific comments concerning the proposed redesign.

Form 990, Part I, Summary of Revenues and Expenses, Percentage of Total

Although some agencies who analyze exempt organizations use percentages to compare organizations, there are many variables in the structure and funding models of exempt organizations that make such comparisons inaccurate without a detailed comparison of many other factors about the organizations. If the IRS were to include these percentages on an official form, it would be interpreted by some as an endorsement of this potentially misleading method of comparison.

We do not believe including these percentages in the form will provide information that is truly beneficial to the donor public, and suggest that this column of percentages be deleted from the form.

Carolyn P. Miller
President

John R. Watters
Executive Director

7500 W. Camp Wisdom Rd.
Dallas, TX 75236-5629 USA
www.sil.org

Phone: (972) 708-7302
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Form 990, Part II, City and State Disclosure

One of the major policies that our organization has grappled with and implemented in this past year is Data Protection. Other sectors of our society (and the worldwide society that we must also work amongst) are requiring exempt and non-exempt organizations to institute costly measures to protect personal information from public disclosure. This Part II requirement is in stark contrast to our commitment to protect personal information. Approximately one-third of our staff comes from countries outside the United States and many of these countries have laws which prohibit the disclosure of information such as a staff member's address. We are concerned that requiring this information on Form 990 so that it is disclosed to the public may force us into the situation of determining which country's laws to obey.

We suggest that this information be required to be disclosed to the IRS upon request, but deleted from the public portion of the Form.

Form 990, Part III, question 3b

It is unclear how to interpret this question, and it seems that any answer could be subject to misinterpretation. Is it asking how widely we do general testing of transactions for conflict of interest, where the answer might be 500? Or is it asking how diligent our staff are to analyze transactions for the possibility of a conflict of interest, even if there ends up being no actual conflict of interest (which is the normal result) so that answer might be 20? Or is it asking how many actual conflict of interest situations have been identified and dealt with, where the answer might be 2?

We suggest that this is not useful information to the donor public and that it be removed from the Form. Perhaps the fact that an organization has, and actively applies, a conflict of interest policy would be sufficient information.

Form 990, Part VII, Line 1c

We track this information to prepare the TD F 90-22.1. Why must the information be duplicated on the Form 990, when regulatory aspects for which that information is needed are addressed through the TD F 90-22.1? We don't see how this one piece of information is useful to the donor public and suggest that this section be deleted.

Form 990, Schedule F, Statement of Activities Outside the U.S.

The exempt purpose of our organization is to provide language development to the lesser-known languages of the world. Our very purpose means that most of our work is located overseas. As shared above, we currently have more than 5,000 people doing language development in more than 1,300 languages. The reporting burden for this section as it is proposed would be significant in time, cost and systems to track the information in ways that we have not traditionally tracked it. We do have good control on where our funds are being spent. However,

they are summarized by administrative areas, not by specific country, and to summarize actual financial data in the ways requested would mean a significant burden of time on our staff.

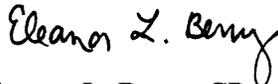
We also question which of this information is useful to the donor public, and which is useful to the IRS only or other governmental bodies. We are very concerned that disclosing this detailed information to the public may result in attacks upon our staff serving in other countries.

We realize that some information about where and how we are working would be useful to the donor public, but it seems that it would be in the form of percentages of work done overseas versus the United States. That information is presently disclosed on our website for those who are interested. We do not believe that the donor public would look to Form 990 for that information.

We suggest that the Form 990 would be more useful to both the public and the IRS if there was a clearer separation of information that is useful to the donor public from that which is needed to analyze regulatory compliance. We also would ask for protection of the sensitive information that is needed for regulatory compliance by requiring that to be reported only to the IRS, not the public.

Thank you for the opportunity to provide our comments and suggestions.

Sincerely yours,



Eleanor L. Berry, CPA
Vice President for Finance

From: [R.S. Tigner](#)
To: [*TE/GE-EO-F990-Revision;](#)
CC: [Senny Boone;](#)
Subject: Supplemental comments from DMANF
Date: Friday, September 14, 2007 6:47:49 PM
Attachments: [DMANF_Comments.doc](#)

Attached please find additional comments from DMANF on the proposed Form 990 revision. Thank you for your consideration.

Robert S. Tigner
General Counsel
Assn of Direct Response Fundraising Counsel (ADRFCO)
1612 K St NW #510
Wash, DC 20006
202-293-9640



Nonprofit Federation

September 14, 2007

Mr. Ron Schultz
Ms. Theresa Pattara
Internal Revenue Service
Form 990 Redesign
ATTN: SE:T:EO
111 Constitution Ave., N.W.
Washington, DC 20224

Re: Additional comments of DMANF on the “redesigned” Form 990

Dear Mr. Schultz and Ms. Pattara:

These comments are submitted on behalf of the Nonprofit Federation of the Direct Marketing Association, more commonly known as the DMA Nonprofit Federation (DMANF). The Federation consists of over 400 nonprofit member organizations that rely on direct and interactive marketing to raise funds and awareness for their missions. It was established 25 years ago and advocates in postal, regulatory, and legislative issues affecting its members.

As you know, the Federation has submitted comments as a participant in the “Fundraising coalition.” The focus on fundraising-connected questions is consistent with DMANF’s mission and expertise. However, “presentational” issues in the proposed new Form 990 are also of considerable concern to organizations that raise funds from the public. In keeping with that concern, DMANF is submitting these few additional comments.

First, we wish to register our endorsement of the entire set of comprehensive comments submitted by the Independent Sector. In particular, we support their analysis and concerns about the liberal use of various ratios and metrics on the summary page of the proposed “core form.” Similarly, we support the portion of comments submitted by the American Society of Association Executives (ASAE) that dealt with the summary page and ratios. We believe, along with ASAE and Independent Sector, that these ratios do not belong on the Form 990.

To be specific, we have concerns with lines 8b, 11 through 15, 17 through 19, 24b, and 25-26. We note first that the reporting contemplated in lines 25 and 26, is dealt with in detail in the comments by the Fundraising Coalition. We simply reiterate here that these lines should be struck from the summary page of the 990.

Generally, the ratios enumerated above suffer from similar deficiencies and can be fairly

described with similar criticisms:

- They are stand-ins for more complete or more in-context information that appears elsewhere in the Form 990. In other words, they are inadequate replacements for information that is readily at hand.
- The mere appearance of the ratios on the face of the 990 advertises that IRS subscribes to the idea that there are norms, numerical rankings, or hierarchies which serve as reference points for the reported ratios. In fact, we know of no credible research that demonstrates that *any* of these ratios are reliable indicators of *any* aspect of nonprofit performance, much less do they lend themselves to numerical scaling.
- By their very nature, individual ratios are subject to year-to-year fluctuations. The fluctuations can be significant. This leads to the unavoidable conclusion that the reporting of single-year ratios is inescapably arbitrary.
- The U.S. Supreme Court has on several occasions considered statutory applications of fundraising ratios. The Court has consistently denied the states the right to take enforcement actions based upon them.
- If these metrics are ever of any use in comparing two or more dynamic organizations, it is only so when context can be fleshed out. This requires two features: comparisons over time and, close similarity of size, mission, program, and age of the organizations being compared. Absent these features, which the form 990 cannot be expected to deliver, the metrics are almost certain to be misunderstood and misused.

We repeat. We urge the Service to remove all the metrics enumerated above from the summary page of the new Form 990. However, we believe the IRS could provide useful information for 990 users that does not suffer from any of the "editorial" deficiencies of the ratios. There is ample space on the summary page to allow for the reporting of multiple years for key data elements.

A filer could easily, for example, report "last year's" fundraising expenses in one column, and the current year alongside it, in another column. In this fashion, a person viewing the summary page of a 990 would have at least *some* context for considering the implication of the numbers presented. The burden on the filer would be minimal (and the prospect of a distorted portrait due to out-of-context ratios would be greatly diminished).

Thank you for your attention and for your consideration of these additional comments. At your discretion, we would be pleased to discuss any of the matters raised here as you complete the 990 revision.

Sincerely,

Xenia "Senny" Boone, Esq.
Executive Director
DMANF

Robert S. Tigner
General Counsel
Association of Direct Response Fundraising Counsel

From: [Pollak, Thomas](#)
To: [*TE/GE-EO-F990-Revision;](#)
CC:
Subject: NCCS/Urban Institute recommendations from the perspective
of software developers
Date: Friday, September 14, 2007 6:57:43 PM
Attachments: [NCCS Final Comments to the IRS-softwareDeveloper.doc](#)

The attached Word document provides our comments.

Thank you!

Tom <<NCCS Final Comments to the IRS-softwareDeveloper.doc>>

Tom Pollak
Program Director
National Center for Charitable Statistics
The Urban Institute
2100 M Street NW
Washington, DC 20037

<http://nccs.urban.org>

<http://efile.form990.org>

202-261-5536

National Center for Charitable Statistics
Center on Nonprofits and Philanthropy

phone: 202-261-5348
fax: 202-833-6231
e-mail:

Memorandum

To: Steve Miller, Lois Lerner, Ron Schultz, and Theresa Pattara
IRS Tax Exempt/Government Entities Division

From: Thomas Pollak, National Center for Charitable Statistics (NCCS) at the
Urban Institute (202) 261-5536, _____

Date: September 14, 2007

Re: Recommendations Regarding the Form 990 Proposed Redesign and Its
Implications for Software Developers and E-Filing Transmitters

Introduction

Urban Institute is currently one of nine or ten software developers that support e-filing of Form 990 or 990-EZ. All others focus on serving professional preparer community. We seek to serve both individual organizations as well as professional preparers.

NCCS accounts for approximately 11 percent of all e-filed 990s and 37 percent of all EZs—16 percent of the combined forms.

Designing with e-Filing in Mind

We hope that the IRS will take the opportunity during the Form 990 redesign process to address a number of issues that make the provision of e-filing services unnecessarily difficult and expensive for us as software developers.

Printed Scheduled vs. Structured Attachments

The use of printed schedules to replace structured list-style attachments (e.g., the list of board members, etc.) in the current version makes sense from a paper-processing perspective but is problematic for e-filing.

Currently, software developers can build simple routines to output lists of directors, sales of securities, and approximately 30 other lists onto blank pages. These lists can range in size from one or two items to hundreds. The standard report writers used to generate these lists currently handle them with ease. But formatting a maximum of 4 items per page -- e.g., on Schedule D -- is much more difficult.

An additional reason why this is problematic: the IRS has suggested that preparers duplicate pages if the number of items exceeds the available space. This will lead to very long and awkward paper forms if an organization has, say, a list of 40 items of one type -- requiring 10 duplicate Schedule D pages -- compared to maybe 1 or 2 pages if the list was combined into a single report, as is currently done.

We understand that finding these pages, separating them (for the confidential Schedule B) and ensuring consistency and completeness in reporting is problematic in the world of paper forms. However, would it be possible for the IRS to permit an **alternative format for e-filed forms**, or, more broadly, for any form that was prepared by certified (or not) software? The alternative format could include required columns and a required page header (possibly with 2-D barcoding to ensure retrieval by IRS imaging and OCR systems). Software providing the alternative formats could be quickly certified to ensure that they provide the necessary formats, if compliance proves problematic.

Expanded Use of Text Explanations

NCCS wholeheartedly supports efforts to permit preparers to include text explanations for any line, section, schedule or part of the form. However, for e-filing purposes, it is essential for the more elaborate explanations that basic formatting of this text be permitted. The ability to add basic tab, paragraph, and table formatting, which are consistent with standard XML CDATA specifications, would suffice. This would impose virtually no burden on IRS database storage capabilities since the number of additional bytes of data is minimal.

It will also be necessary for the IRS to modify its XML schema so standard tags can be used to identify the location on the form to which each additional explanation should be tied. The approach would look something like this.

```
<AdditionalExplanations>
<Explanation>
  <ExplanationReference>Form990Part4Line1c</Reference>
  <ExplanationText Type=CDATA>This is my explanation ....
    ...and it goes on for many lines... and has tabs and tables in it...
  </ExplanationText>
</Explanation>
<Explanation>
  <ExplanationReference>Form990ScheduleB</Reference>
  <ExplanationText Type=CDATA>This is my explanation ....for this contribution
  </ExplanationText>
</Explanation>
```

As we stated in our earlier set of comments dealing with the substance of the form:

As a public disclosure document, it is important for filers to have an opportunity to explain their answers to specific questions. We encourage the IRS to allow nonprofits to include written explanations that are available to the public to clarify a particular line, section, part or schedule. One approach is to provide a "Schedule O" for explanations. Each explanation would also identify the line, section, or part that it discusses. If this approach is adopted, a check box should be added in each part or major section to alert the reader that an explanatory comment is provided in Schedule O...

[This approach] is consistent with the current approach used by the IRS for e-filing the Form 990. For e-filed returns, numerous "additional explanations" (as well as "compensation explanations" for the compensation parts) can be added. These provide up to 9,000 characters each - numerous pages - and can also be linked to specific lines or parts of the form.

Inclusion of Audited Financial Statement PDFs

Possibly more problematic from an IRS data storage perspective is the inclusion of PDF attachments. This, however, is NOT a problem from our perspective as a software developer and we welcome the ability to support this change. We already permit uploading of various files for importing into attachments and to meet state requirements for audited financial statements, so it creates no meaningful burden for us.

Instructions

Making the instructions available in HTML, a rudimentary XML structure, or other structured format would make updating them much easier for software developers. Ideally, each block of text would be identified as tied to a particular XML element or block of elements (whether the form as a whole, a whole part, or a block of questions).

Related Issues

The Service's inability to expand e-filing requirements to organizations preparing fewer than 250 IRS returns significantly hinders our ability to cost-effectively maintain our system. We are especially concerned about our ability to support the large investment in retooling our system to support the new form in 2008 without a commitment by the IRS to expand the range of organizations that will be required to e-file in 2008 and beyond.

As the only Internet Provider supporting Form 990 e-filing, we ask that the IRS find an alternative to the requirement that we submit the preparer's signature form with all e-filed Form 990s and EZs. We estimate that every form that we must receive, attach, and transmit requires approximately 3-4 minutes of staff time. This adds up to a very substantial amount for us. It is especially burdensome since we have kept the system free for filers with less than \$100,000 in gross receipts—a valuable service for both the organizations and the IRS. Alternatives include:

- (1) Elimination of the requirement that the signature form be transmitted to the IRS – EROs, for example, need not transmit client signature forms.
- (2) Implementation of a system so that preparers could have their personal shared secret (e.g., AGI) validated directly with the IRS. The IRS would provide some sort of code that would then be included in our XML transmission to validate the preparer while NCCS would not need to manage this confidential information. This is similar to our current system for managing credit card payments through Paypal.

Redesign Schedule

NCCS will need extensive lead time to complete its retooling of our 990 Online system. We recommend that the IRS adhere to its plans to have the redesign completed (and stable) by the end of the year and stable and correct XML schemas available soon thereafter.

Conclusion

Despite these hurdles, NCCS welcomes the adoption of the redesigned Form 990 since we believe it will dramatically increase the benefit of the Form 990 to the nonprofit sector, especially if it is combined with increased efforts by the IRS to make e-filing easy and cost-effective for nonprofit organizations, tax preparers and software developers alike.

From: [schibner](#)
To: [*TE/GE-EO-F990-Revision;](#)
CC:
Subject: Form 990 draft revision
Date: Friday, September 14, 2007 7:32:54 PM
Attachments:

Email: Form990Revision

From: S.C.Hibner

Re: Form 990 draft revision
General comments
501(c)(7) Social and Recreational Clubs
Comments on specific items in 990 Form and Instructions

I. General comments:

One of the biggest obstacles to understanding what data goes where on Form 990 is that the text on the Form itself and the explanations in the Instructions are from the perspective of a prototypical "social welfare" charitable organization.

Heaven help you if your organization is a qualified amateur sports organization -- just try to figure out how to make the details of an international sports event fit into the "social welfare" template. I fought that one for several years, trying on the one hand to answer literally the questions, and on the other hand to present a correct picture of our "program service". Once I realized that the problem was the perspective bias in the Form itself, it became possible to infer what kinds of information the Form was trying to elicit.

Social and recreational clubs have the same perspective bias problem. So much of the draft Form 990 and Instructions concentrates on information from the tax-deductible organizations that the differences in treatment of the non-tax-deductible ones are not adequately addressed. Some of the helpful 501(c)(7) information from the 2006 Form 990 Instructions appears to have been omitted in the new draft.

II. 501(c)(7) Social and Recreational Clubs

I also have experience with a sport oriented recreational club with traditional activities that far pre-date the enactment of what are now the relevant tax provisions for a 501(c)(7). As a result of historical investment relationships, this club sometimes bumps up against the 35% limit. Even accounting firms seem to be unsure of exactly how to calculate the limit. Therefore, it would help enormously to know exactly which line items on the Form 990 and 990-T are used by IRS to calculate the 35% test.

III. Specific items in the Core 990 Form and Instructions

1. As mentioned by earlier commentators, the 990 Instructions needs better differentiation of font sizes to distinguish headings, subheadings, sub-subheadings, etc.
2. 990 Core, Part II. Address of board members, et al., should be STATE only. "State" is sufficient for information about geographical diversity, without providing more information that may lead to stalking-type harassment. Who needs to know the city or town? (Communication with specific board members may always be sent to the organization's home office.)
3. 990 Instructions, page 13, item M. Description of "all organizations" is inconsistent with Instructions for Schedule M, which says that the intent is to identify "charitable" contributions.
Does IRS want a 501(c)(7) to report non-cash contributions? Such a contribution is not tax-deductible to the donor and is not "gross revenue" to the club, but is rather an asset with a basis.
4. 990 Core, Part III, line 6. "and related committees" is inconsistent with Instructions, which addresses only "governing body". Furthermore, it is misleading to answer correctly "Yes/No" to a compound question about different entities.
Please restrict the question on Form 990 to "governing body" only.
5. 990 Core, Part IV and Instructions. Too much of the discussion and examples appear to be solely from the perspective of a 501(c)(3) organization, resulting in discussions that may be erroneous if read

to apply to a 501(c)(7). Somewhere in the Instructions, or by reference to a separate publication, there needs to be a discussion of how a club is to cope with the 990. E.g., it would be helpful to state that "program service" generally equates to "exempt function". Too often in 2006 Instructions, it is difficult to determine where a given discussion begins and ends for a specific type of 501(c) organization. It would be easier to understand if the bits and pieces were pulled together in one place for 501(c)(7) clubs, instead of being sprinkled throughout the Instructions.

6. 990 Core, Part IV, line 3 Instructions (pg 23). The sequence of sentences and exemplars [same as 2006 Instructions] makes it seem as though the exemplars are those typical of a social club, whereas I think the intent is to list benefits which are typical of "membership" 501(c)(3) organizations.

The confusion could be reduced by deleting the first two sentences ("Report dues.... relationship with dues." and then placing them BELOW the Examples of membership benefits.

7. 990 Core, Part IV, line 2d-2g, Instructions, pg 23, Business Code. Is the business activity code supposed to be only for amounts entered in column (C)? If so, the layout is very confusing as compared to 2006 forms.

The Phone Forum transcript indicates that business codes are to apply to all sources of revenue -- but how on earth can you do that with this layout? Besides which, the list of business activity codes which is cited (for UBI) is grossly inadequate for ALL sources of revenue. And, the list of codes in 1120A Instructions is not well differentiated for most 501(c) kinds of activities.

8. 990 Core, Part IV, line 9 Instructions. Is this discussion correct for 501(c)(7)? It strikes me that this is a discussion relevant to some 501(c) organizations and not others in regard to rents and UBI; please include a statement of which ones it does, or does not, apply to. See information on rent in 2006 990 Instructions for line 86.

9. 990 Core, Part VII, line 14 Instructions. Please include the information presented in 2006 990 Instructions for line 86.

10. 990 Core, Part VII, line 14a Instructions. Does this item also include interest received from a time payment plan for initiation fees?

11. 990 Core, Part VIII, line 11a, 11b. The instructions are clear that the question is about "charitable", i.e., tax-deductible, contributions. The form should likewise be clear: "any charitable contribution of \$75 or more"

12. 990 Core, Part IX. Is this Part meant to apply to 501(c)(7) clubs?

13. 990 Core, Part IX, line 3. What is "Activity Code"? This is not explained in the Instructions. What is the explanation for the "*" in Column (A)?

14. 990 Core Instructions, page 47. "Donated Services" seems to be an orphan and does not appear anywhere in the draft Form 990. It appears in 2006 Form 990, line 82.

If the idea of line 82b was to allow an organization to recognize those who had donated valuable services, then would not that be most facilitated by an attachment naming those donors?

Thank you for the opportunity to participate in the response to your draft 990.
S.C. Hibner.

From: [Wahl, Jody](#)
To: [*TE/GE-EO-F990-Revision;](#)
CC:
Subject: NASCO comments
Date: Friday, September 14, 2007 7:54:58 PM
Attachments: [AGO_DOCS-#1862927-v1-990_comments.DOC](#)

September 14, 2007

Mr. Ron Schultz
Ms. Theresa Pattara
Form 990 Redesign
Internal Revenue Service
Washington, DC

Via Email

Re: National Association of State Charity Officials (“NASCO”) Comments

Dear Mr. Schultz and Ms. Pattara:

NASCO strongly supports the IRS’s efforts to redesign the Form 990 to meet not only its needs to enforce federal tax laws, but to serve the form’s many stakeholders, which include state regulators. The redesign recognizes that in the nearly thirty years since the form was last redesigned, the nonprofit sector has evolved. Exempt organizations are more frequently engaged in complex business-like activities and relationships with other entities. Advances in communications technology in the past twenty years have made it possible for nonprofits to widely expand the geographic area in which they conduct programs, make grants and solicit funds. NASCO supports IRS goals to improve transparency and compliance and to reduce the burden on filing organizations.

NASCO supports the concept of a core form, a summary page and schedules that will be filed by organizations as they apply to their activities.

Data collected on the Form 990 is vitally important to state officials charged with the responsibility to oversee charitable assets, charitable organizations and fundraising. As you know, NASCO has been formally collaborating with the IRS on the design of the Form 990 since 1981, when states agreed to accept the Form 990 for state registration and reporting purposes provided that information the states needed would be collected by the IRS.

Previously, a charity that solicited contributions on a national basis was required to complete dozens of unique financial reporting forms to comply with state regulations. The agreement by the states to accept the Form 990 as a standardized, multipurpose information return and financial reporting form was intended to ease the filing burden on nonprofits and improve the accuracy and reliability of exempt organization financial information filed with both state officials and the IRS. We believe that there has been success in meeting both objectives, but as always, we strive to continue to seek further improvements. NASCO has appreciated the IRS’ responsiveness to NASCO’s needs and we look forward to continuing this valuable relationship.

The governance questions will generate questions from nonprofits as to whether they are appropriate areas of inquiry for the IRS, as state officials traditionally pursue violations of fiduciary duty and failures in governance. If IRS engages in educational activities on “best practices” for charity directors and trustees, NASCO is willing to collaborate.

The proposed implementation date is ambitious, and will require many states to completely revamp their charities registration databases. This may pose significant challenges for some states.

Set forth below are NASCO’s comments on the draft redesign.

1. Raising the Filing Threshold

The IRS is considering raising the minimum filing threshold from \$25,000 in annual revenue to \$50,000. This recognizes that the current value of \$25,000 is much less than it was in 1979. Of the 39 states that regulate charities and fundraising, nearly all maintain minimum registration and reporting thresholds of \$25,000, and under. As an example, New Hampshire requires all charities, regardless of size or income, to register and report. California requires all charities that receive assets of any amount to register. South Carolina, Maine and Utah require charities to register without regard to a minimum. Alaska’s minimum is \$5,000; Michigan’s is \$8,000 for charities that solicit, and no minimum for charitable trusts. Virginia’s law currently provides that a charity that does not file a Form 990 must file an audited financial statement, if revenues are at least \$25,000. Texas, which does not register charities at all, relies on Form 990 data obtained from public sources when it evaluates complaints against charities. New York, Minnesota and many other states have a \$25,000 threshold by statute. Charities with revenues between \$25,000 and \$50,000 must register and file an annual report.

NASCO surveyed its membership on this question and asked whether there is support for the notion that the states should similarly raise the minimum threshold in tandem with the IRS. We find that no state statute specifically ties its threshold to that of the Form 990. In fact, many states require small charities that are not required to file the Form 990 with IRS complete the return and file it with the state.

NASCO members state that they believe that retention of the minimum thresholds is important because of the high incidence of mismanagement, self-dealing, misappropriation and waste of charitable assets at these lower asset levels, which most states are mandated to protect for the benefit of the public. While we do not have specific data on this issue, NASCO members state that a relatively high proportion of complaints they receive relate to the operations of smaller organizations.

We recognize that to achieve its goal to reduce burden, the IRS believes it may need to raise the threshold for the filing the Form 990. We note, however, that comments proposed by Independent Sector and others express concern about the lack of public information that will be lost about the tens of thousands of smaller organizations should this occur.

If the threshold must be raised, NASCO would prefer that the small organizations be required to file at least a short form of sorts. If NASCO members need to revert to a state-specific form for registration and reporting purposes, the uniformity we have gained through the Form 990 will be lost. NASCO stands willing to work with the IRS and others to achieve a compromise.

2. Core Form, Summary Page

NASCO supports the concept of a summary page that provides a snapshot of an organization's identity, its size by income and assets, its purpose and program focus, and its governance structure. The states appreciate the addition of new data such as the state of legal domicile, and the year of formation. It could also be helpful to know the organization's form (corporation, LLC, unincorporated association, trust) and whether it is a membership organization.

Many nonprofit charitable organizations have alternative identities. For instance, C.C.R.F. is known as Children's Cancer Research Fund. American Lebanese Syrian Associated Charities is more widely known as St. Jude Children's Research Hospital. A space for alternative corporate identities would be helpful.

Part I, Line 1. Substitute *purpose* for *mission*. The mission statement could be added to Part III, line 11 which asks how the organization makes certain documents and information available to the public.

Part I, Line 2. Provide additional space. Add *program* before the word *activities*, so that it states "list the organization's three most significant program activities and the activity codes."

Part I, Line 4. "Independent" must be adequately defined in the instructions and not merely in the glossary.

Part I, Line 6. Compensation threshold. This requires a listing of the number of individuals receiving compensation in excess of \$100,000. Many NASCO members believe that the compensation disclosure threshold should be lower.

Part I, Lines 11-16. Line 12 should require reporting of contributions and grants from all sources, excluding government. Include a separate line for government grants.

Part I, Lines 25 & 26. Generally, NASCO is not convinced that it is necessary to include the Gaming and Fundraising data on the summary page so long as the detail is provided on a schedule. Gaming is a specific activity that bears little resemblance to other types of fundraising and placing these two activities together on the summary page is confusing.

Removing this from the summary page will free up space that can be used for more information about programs and activities, and perhaps for certain expense information that could help to make the summary page a universal reporting form for small organizations.

NASCO encourages the IRS to add another line to Part I that requests the total number of volunteers. This is important information that is not captured elsewhere.

3. Summary Page Metrics, Part I, Lines 8b, 19b, 24b

We understand that the proposed inclusion of the percentage calculations on lines 8b, 19b, and 24b have prompted a fair amount of objection in comments received thus far. NASCO is sensitive to the notion that prominently featuring such percentages on the summary page connotes that these are important measures of a nonprofit organization's performance and that one can use these formulas to draw meaningful comparisons between entities. The diversity of the nonprofit sector is such that often these comparisons are not meaningful when applied broadly.

Individuals who are using nonprofit data to evaluate an organization's performance can choose which numbers to compare and perform the calculations as they see fit. A lender will consider certain ratios to be particularly relevant, while a potential funder may consider other financial indicators.

NASCO encourages the IRS to reconsider whether the ratios proposed in the draft are those that provide the most value to the public and are not likely to lead to misunderstanding or distortion.

In our experience, potential donors who contact state regulators for information want assurance that their contribution will be well-spent. They want to know to what degree their financial support will advance the nonprofit's stated purposes. Prior year financial data can be helpful in demonstrating the proportion of the organization's resources that were spent on program services and other expenses, both by function and object category. It may be relevant, for instance, to a donor if the program expenses are chiefly in salaries or in printing, postage and caging expenses. We routinely encourage donors to review at least summary data taken from the Form 990, and to consider that information against their own standards and values. Percentages can be helpful in that analysis. For those citizens who respond to direct mail and telemarketing

donation appeals, and who are making choices among dozens of requests for contributions, it may be especially helpful to compare the total of joint costs of conducting an educational and fundraising activity to total expense or to program service expense.

Thus, a ratio that in NASCO's experience is valuable to readers of the Form 990 is the percentage of program service expense to total expense.

Part I, 8b. Asks that the total amount of money spent on program services be divided by compensation paid to officers, directors, trustees, and other key employees. The vast majority of charitable programs services are carried out by persons other than officers, directors, trustees and other key employees. NASCO doubts that this metric will provide meaningful information.

Part I, 19b. Asks that total fundraising expenses be divided by total contributions. This figure can be helpful to donors when the charity is reliant on one or two methods of raising funds. Most established entities generate revenue and contributions through a diversified approach, seeking both large and small contributions and grants. Newly established charities may experience high fundraising costs initially until the organization is able to secure a number of faithful donors. But for those charities that do not have multiple sources of revenue, this number may be of value to some donors.

Part I, 24b. Seeks to compare the total of current operating expenses to the organization's fund balance. Generally, the individual who is evaluating this ratio is going to be able to do so without having the calculation performed by the reporting entity.

4. Part II, Compensation

The proposed reporting threshold for compensation disclosure is \$100,000, up from \$50,000. NASCO members generally believe that the current \$50,000 threshold should be retained.

On line 1a instructions, it might be helpful to insert "in the aggregate" after reportable compensation.

NASCO concurs with Jack Siegel's recommendation that individuals be listed in descending order (trustees and directors first, institutional trustees and directors, then officers, then employees). That would result in all individuals within one classification being grouped together.

NASCO prefers that the disclosure of the position title and number of hours devoted weekly to position be retained.

Because compensation for former employees who receive less than \$100,000 in compensation does not need to be reported on this schedule, the form only reveals former employees paid in excess of \$100,000. Column B is helpful because it permits all relevant individuals to be included in one comprehensive schedule.

NASCO has traditionally supported the disclosure of the city and state of residence of directors, trustees and officers. We recognize, however, that many organizations engaged in controversial programs, or which assist those in abusive relationships, have a strong interest in maintaining privacy to avoid harassment or threats. NASCO members concede that the safety of volunteer directors, trustees and officers from harm will occasionally override the need for public disclosure of the city and state of residence.

5. Part II, Section B

Entities that respond “yes” to lines 5 a - 5e should be required to complete Schedule R and the Line 5f table should be moved to Schedule R. Rather than ask for a description of the transaction, there should be a list of categories to allow a check-off rather than a description, such as those that are currently captured on Form 990, Schedule A. You may wish to add “substantial contributor” to line 5 as well. Generally, NASCO prefers the business relationships definition that currently applies to Schedule A, Part III, Line 2.

Line 10a requires the listing of the top five independent contractors that received compensation of more than \$100,000. The instructions clarify that professional fundraisers are to be excluded since they are to be listed on Schedule G. It could be helpful to mention it on the form.

6. Part III, Statements Regarding Governance

Steven T. Miller, Commissioner, Tax Exempt and Government Entities has engaged the tax-exempt sector regarding the appropriate role for the IRS with respect to governance. He has taken the stance that, at a minimum, the IRS should educate on basic standards and practices of good governance and accountability. The states concur with observations made by Senators Max Baucus and Charles Grassley that governance is at the core of every charity scandal. In addition to carrying out our registration and enforcement functions, NASCO members have been extensively involved in promoting accountability and proper stewardship of charitable assets. State offices have published and freely distributed truckloads of materials on fiduciary duties of directors, and through forums, meetings and telephone calls, we have had countless educational contacts with community leaders and nonprofit board members. As an organization, NASCO is committed to continuing these important activities and welcomes the educational nature of the inquiries on the redesigned form. With that said, however, it may be important for the IRS to continue to state its reasons for asking the governance-related questions and dispel any notion

that it intends to conduct enforcement activity solely based on responses. It would also be useful to note that the organization should refer to the applicable state law for specific legal requirements.

Independent Sector suggests that separating statutory compliance questions from “best practices” questions would help to make the distinction that certain questions are meant to be educational in nature. This suggestion is worthy of consideration.

The instructions should clarify that non-voting members are not to be included in the number of persons on the governing body. Some organizations list honorary trustees or directors on the IRS return. When prominent individuals are so listed, it gives a reader the misleading impression that these persons have an active role and vote in the management of an organization.

Question 75a of the current Form 990 asks how many officers, directors, and trustees can vote at board meetings. However, we do not see that question on the draft return. Because some organizations will list honorary, non-voting directors, this information is useful in determining if that is the case. In addition, an instruction for Part II should clarify that those non-voting, honorary directors should not be listed.

The checkboxes to question 8 ask if an independent accountant provided certain services. Since there is no opinion or other form of assurance provided by an accountant who prepares a compilation, this choice should be eliminated to avoid any misleading conclusions.

NASCO suggests that IRS consider adding a question to elicit whether the entity experienced theft and/or embezzlements during the year: Theft and embezzlement are often indicators of poor internal controls and/or lack of board oversight. Many entities currently report such losses in overall operating loss without explanation.

As stated above, the mission statement could be added to Part III, line 11, which asks how the organization makes certain documents and information available to the public.

7. Part IV, Revenue

Additional data regarding sources of contributions, such as aggregate amounts raised from individuals, foundations, and corporations, would be desirable and of interest to the public.

8. Part V, Statement of Functional Expense

For lines 1 and 2, request that the amounts of cash and non-cash grants be separately disclosed. Line 3 should include a reference to complete Schedule F.

Line 11 e. The Form calls for the amount of professional fundraising *fees* to be reported on Line 11e. The Instructions state that the organization should report not only the fee, but the amount of money paid for fundraising services, including payments for printing, paper, envelopes, postage, mailing list rental, etc. be included in professional fundraising *fee*. The fee portion of what an organization pays to a professional fundraiser should be separated from the amounts it pays to the fundraiser for other services, such as graphic design, printing, or postage. However, both pieces of information should be factored in for purposes of the Schedule G trigger. The dollar level of the trigger, as we state below, may be too low at \$10,000.

The states ask that costs for printing, postage, and telephone costs be retained as object or natural expenses that can be allocated to the appropriate function. Line 13 combines supplies, telephone, postage and shipping, and printing and publications into “office expense.”

Line 12, Advertising. The instructions state that in-house fundraising costs and printing should be reported as advertising expense. This is confusing.

NASCO heartily endorses the 5% limitation for other expenses imposed by Line 23.

NASCO understands that the absence of the joint cost disclosure in the redesigned form is an oversight and will be included in the final draft. NASCO wishes to express its strong preference for this information. We request that the joint cost information currently required be added back into the redesigned form.

The overview leaves the impression that the joint cost disclosure would be replaced with the requirement that organizations exempt under section 501(c)(3) and 501(c)(4) follow AICPA SOP 98-2 in allocating joint costs of conducting a fundraising and educational activity. NASCO supports requiring all tax-exempt organizations that allocate joint costs to follow AICPA SOP 98-2.

It must be emphasized that these are two separate issues. Requiring organizations to follow SOP 98-2 is a welcome development that NASCO has long advocated. But it is not a substitute for the disclosure of the actual joint cost expense allocation. Without that, a reader of the Form 990 would not be aware that such allocations took place, and would not be aware of the effect of those allocations on the functional expense statement.

We agree with the movement of payments to affiliates to Part V, line 21 of the draft 990.

It is not clear if organizations holding both conservation land and conservation easements are required to fill out both Part V and Part VII. These parcels are “program related” so it would appear both parts must be completed by the conservation organization: Part V requires the cost

and book values of the conservation land while Part VII lists the easements only and does not require cost/book values. A clarification would be welcome in the form or in the instructions.

9. Part VI, Balance Sheet

Line 10 does not require a description/value of the investments on Schedule D. Some public charities have significant publicly-traded stock and bond holdings that are not being properly administered and which could jeopardize the financial health of the organization; this therefore becomes an important piece of information for regulators.

Part VII, line 16 refers to “assets in permanent endowments.” Part VI, lines 28, 29, and 30 of the core form 990 refer to SFAS 117. Schedule D, Part XII refers to “endowment funds.” Schedule D, Part XIII refers to reconciliation of Net Assets including unrestricted, temporarily, restricted, and permanently restricted assets. It seems there should be some cross-reference among these four elements since all four refer to “endowment” funds which are permanently restricted assets as defined by SFAS 117. Senators Grassley and Baucus specifically mention endowment funds in correspondence to Treasury. The new 990 should allow the reader to understand the value and size of permanently restricted funds held by a public charity.

10. Part VII, Statements Regarding General Activities

The instructions for lines 7 a-b, which serve as a trigger for Schedule R, need to be very clear. The definition of “control” is not consistent between the core form glossary and that for Schedule R. The core form refers to “tax-exempt” entities, while Schedule R refers to “nonprofit” entities.

The reference to “related organization” should be changed to related parties. The definition of related parties that appears in the 2006 Form 990 should be retained. The draft redesign definition is not as comprehensive and does not include a critical element, namely, person(s) who exercise substantial influence. The definition of substantial influence should also be retained from the 2006 instructions.

The form uses the term “permanent endowment.” In the glossary the term *endowment, permanent* is defined as, “Assets held subject to stipulations that they be invested to provide a permanent source of income.” A better definition (from the University of California) might be: “Endowment funds are funds to which the donor has stipulated that the fund principal shall remain inviolate and that only income be expended.” Public charities, unlike private foundations, often misunderstand what an “endowment fund” really is and tend to include unrestricted funds in their permanent investment funds. The definition should be very clear for purposes of the form 990 in order to reduce the confusion among public charities and to give an accurate accounting of “true endowment” funds.

Line 12 appears to promote the notion that an entity serving as a fiscal agent should have a written agreement to protect its tax-exempt status. NASCO agrees that written fiscal agency contracts are desirable and would help to minimize legal disputes that often arise between the sponsor and the sponsored organization regarding expenditure authority. Additional discussion of the objectives of this question should be added to the instructions.

11. Part IX, Statement of Program Service Accomplishments

The Statement of Program Service Accomplishments should be moved to the forward section of the core form, preferably the second page. The signature block can be appended to Part VIII, Statement Regarding Other IRS Filings.

12. Schedule D

NASCO recommends adding a section for publicly traded investments. The instructions for VI should encourage disclosure of all “other assets” and “other liabilities.” The instructions will need to provide a brief overview of FIN 48.

13. Schedule G Fundraising and Gaming

In our experience, entities that engage significantly in gaming are not likely to have the fundraising activity that would be reported on the proposed Schedule G. NASCO agrees that the fundraising and gaming activities are sufficiently distinct, particularly from the IRS’ tax enforcement perspective and the states’ fundraising regulatory posture to warrant separation of the disclosure and reporting functions.

The schedule trigger, at more than \$10,000, on Part 4, line 11a (gross income from fundraising events) or Part 5, line 11e (professional fundraising expenses), is quite low. It would potentially encompass every school PTO carnival held in the United States. Perhaps a trigger of \$25,000 should be considered.

Part I, Fundraising Activities. 1a. While it is helpful to know the method by which a charity solicits contributions from the public, it would be more relevant to know what proportion of revenues received were from each method. Other methods to be added to the description are door-to-door solicitations, electronic or print media solicitations, as well as a space for “other.”

For purposes of Schedule G, it would be more useful if the tax-exempt organization indicated only the fundraising activities for which it paid a fundraiser for services rendered.

Part I, Fundraising Activities 1b. This question asks if the organization had a written or oral agreement with any individual (including officers, directors, trustees, or key employees listed in Form 990, Part III) or *organization* in connection with these or other fundraising activities. If yes, they must be listed on the table, disclosing the name of the individual/organization, the type of activity, the gross receipts, amount paid to or retained by individual, and the amount paid to the organization.

First, reference to the insiders within the parentheses almost suggests that the main purpose in asking this question is to determine if those insiders are being paid to conduct fundraising activities. This notion is reinforced by question 2. Only after reading the question more than once, it becomes evident that the question is eliciting information about any contracts the tax-exempt organization has related to fundraising. Second, characterizing the contracted, compensated fundraiser as an “organization” is confusing. It would be preferable to refer to the fundraiser as an individual or third party or entity. A definition that closely resembles common state definitions for professional solicitor, fundraising counsel, or professional fundraiser should be considered.

NASCO asks that the address of the third party or entity be disclosed.

This request for disclosure is perhaps much broader than is necessary. Many states require that contracts between charities and professional fundraisers be filed or described. The states generally do not require contracts with graphic designers, lettershops, printers, entertainers and other vendors that provide services connected to the fundraising activity to be filed as part of the registration process. If the situation warrants, those contracts can be obtained by investigative requests.

It would be desirable to separate out the fee portion of the amount paid to an outside professional from the other amounts an organization pays to its vendor for related costs, such as printing, design, telemarketing services, or postage.

The wording of columns (iv) and (v) in the table, “amount paid to or retained by individual or organization listed in (a); and amount paid to organization,” raises the issue of custody and control of the contributions solicited from the public.

The information provided in response to Question 3 might be improved by a list of the states with which the organization is registered (or may be recognized as exempt from the requirement) and checkboxes for each state.

Only a few NASCO member states actively regulate gaming activities in addition to regulating charitable fundraising. Most states have a separate agency or division that enforces state laws governing bingo, pull tabs, raffles and other games of chance. NASCO received a few

comments from its members regarding the gaming section of this schedule. Instructions for Part III: The definition of gaming does not include Texas Hold ‘Em Poker or other card games which are rapidly replacing Bingo among the larger charities engaging in games of chance. Additional information may be required if an organization contracts with a third party for gaming revenue. Line 19b is not clear with respect to the amount of distributions required under state law that were distributed to other organizations. It is not clear if the actual amount distributed or the minimum required to be distributed is requested. Both amounts may be of value.

14. Schedule H, Hospitals

The data collected on the hospital schedule will be valuable to government, to healthcare policy-makers and to the broader public. We acknowledge the vigorous debate within the industry as to what should be included in community benefits. No matter what the final schedule looks like, the data obtained through its uniformity across the spectrum of tax-exempt hospitals will be an achievement.

New Hampshire and many other states have specific community benefits reporting laws for hospitals. Part I, sections 1-4 of Schedule H refers specifically to charity care activities. New Hampshire nonprofit hospitals are not required to provide charity care as part of their community benefits obligations and the Part I emphasis therefore has the potential to unfairly portray those hospitals that do provide community benefits listed under “other benefits” but do not provide charity care.

Defining actual hospital cost has been a challenge for every state seeking information on community benefits. The worksheets attempt to quantify the charges in a consistent manner, but there are a number of variables that make uniformity and cross-sector comparisons very difficult. For example, under Medicare, patients are sorted into DRGs or Diagnostically Related Groups that weigh several factors in determining the reimbursement rate paid to the hospital. Hospital A in New York City may charge more for a certain procedure than Hospital B in Concord, New Hampshire, but not receive a greater Medicare reimbursement even though the New York hospital’s labor and physical plant costs are legitimately higher. In addition to working with the Catholic Health Association, the IRS may also consider speaking with state regulators in those states with community benefits reporting requirements in order to understand the difficulty of valuing/quantifying the benefits provided by nonprofit hospitals. There is no opportunity for a hospital to report those community benefits that may be *qualitative* and impossible to quantify.

15. Schedule M, Noncash Contributions

NASCO shares the concern of the IRS that overvalued non-cash contributions on charity income and expense statements run the risk of distorting what is reported on the Form 990. Therefore, we welcome the addition of Schedule M.

Schedule M requirements may add an administrative burden for some charities that have not been properly accounting for donated items. However, NASCO believes that a long history of lax accounting for non-cash goods does not justify continuing the practice. A review of many comments filed with the IRS fails to acknowledge that the charity is valuing the items for purposes of reporting them as income. A possible solution to this dilemma would be to require charities that report “non-cash contributions” to keep these records. If they do not report them, then there may be no need for tracking. This would not be true for any item for which the organization provided a Form 1098 to the donor. Any organization providing a 1098 should be required to report and account for all such donations.

There is a need for more detailed instructions on what to report, how to report and record-keeping requirements for all items listed on Schedule M.

We encourage the IRS to also capture information on the donors of the non-cash goods and their disposition. We also believe that the schedule should include the disposition of non-cash donations received in a prior period.

For columns b and d it would be beneficial if there were a total amount listed after line 26. This will allow the reader to determine if all items listed on Schedule M have also been accounted for in Part IV (Revenue) and Part VI (Balance Sheet).

There are several suggestions that Schedule M should be eliminated and this information combined with Schedule B. However, Schedule B is not publicly disclosed and not required to be filed with most states. NASCO does not support combining Schedule M into Schedule B.

16. Schedule N, Termination or Significant Disposition of Assets

The information captured on Schedule N will be highly welcomed by state offices that oversee dissolutions and transfers of assets. NASCO applauds the IRS for the addition of Schedule N.

17. Schedule R, Related Organizations

The language and definitions between the core form and Schedule R need to be consistent and clear. The reference to “related organization” should be changed to related parties. The definition of related parties that appears in the 2006 Form 990 should be retained. The draft redesign definition is not as comprehensive and does not include a critical element, namely, person(s) who exercise substantial influence. The definition of substantial influence should also be retained from the 2006 instructions.

Part II, B, Line 5f should be moved to Schedule R. Rather than ask for a description of the transaction, there should be a list of categories to allow a check-off rather than a description, such as those that are currently captured on Schedule A.

Finally, a question has arisen as to the proper reporting of contributions or grants made to an organization that is acting as a fiscal agent. We understand that a grant made by a fiscal sponsorship arrangement is legally a gift to the exempt organization and it must retain control over its expenditure to the sponsored organization and not act merely as a pass through.

NASCO asks that the language currently in General Instruction E be retained. It helps to underscore our authority to question whether the form has been properly completed and submitted.

Where the instructions make reference to allocations between program, management and general and fundraising, the IRS should refrain from implying or stating that certain costs are always allocated to program.

Thank you for considering NASCO's comments. Congratulations to the IRS team on engaging the sector so well through this period of comment and for moving this important project forward.

Very truly yours,

JODY WAHL
President, National Association of State Charity
Officials

(651) 297-4607 (Voice)

(651) 296-7438 (Fax)

From: [Laura Deitrick](#)
To: [*TE/GE-EO-F990-Revision;](#)
CC:
Subject: Public comment to draft form 990
Date: Friday, September 14, 2007 9:05:32 PM
Attachments: [comments.doc](#)

Please find attached our comments.

Thank you,

Laura J. Deitrick
Doctoral Research Associate
Center for Applied Nonprofit Research

USD Logo

School of Leadership and Education Sciences
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Building a website is a piece of cake.
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DATE: 9/14/07

TO: Lois G. Lerner
Director of the Exempt Organizations Division of the IRS

Catherine E. Livingston
Deputy Associate Chief Counsel (Exempt Organizations)

Internal Revenue Service
Form 990 Redesign
ATTN: SE:T:EO
1111 Constitution Avenue, N.W.
Washington, DC
20224

From: The Caster Family Center for Nonprofit Research
The University of San Diego
Robert Donmoyer (donmoyer@san Diego.edu) and
Pat Libby (plibby@san Diego.edu), Co-Directors

Laura Deitrick, Research Associate
Audrey Barrett, Research Assistant

Re: Comments on Revised Draft of IRS Form 990

This document responds to the request for public comments on the proposed revisions of IRS form 990. The Caster Family Center for Nonprofit Research at the University of San Diego (The Center) was created to study issues of strategic importance to the nonprofit sector and to identify and advance best practices in nonprofit leadership and management. Not surprisingly, we often use the information on the 990 forms as data in our work. Our comments reflect this researcher perspective. We also, however, have invited practitioners in the University of San Diego's Nonprofit Leadership and Management graduate program to review the proposed revisions and share their comments with those of us who work in the Center; their perspectives also are reflected at various points in this memo.

We appreciate both the IRS's efforts to revise the 990 document and the goals of increasing transparency, promoting compliance, and minimizing the burden on

filing organizations that have guided the revision process. We also recognize that a tension exists between some of these goals. This tension was reinforced when we received feedback from practitioners who expressed concern about the increased burden to filers and preparers that may accompany the new version of the form. Thus, in the comments below, we have tried to be sensitive to the burdens imposed on organizations by increased reporting standards while still focusing on researchers'—and the general public's—need for transparency and compliance.

There are two issues that we believe are especially important. The first relates to the breakdown of expense reporting between the managerial, fundraising, and program categories. Second is the need for expanding the breakdown of revenue to include separate categories for corporate and individual giving. Each of these issues will be covered in the comments below. The comments are organized around the sections of the proposed form in the order in which the sections appear in the 990 draft format.

Instructions

For e-filers we suggest each block have a hot link that takes preparers directly to an electronic copy of the pertinent instruction section. This will reduce errors and frustration on the part of preparers from smaller nonprofits and support the goal of minimizing the reporting burden for nonprofit organizations.

Summary Page

Item C: Name of Organization

We suggest adding a line that asks for any alternative names the organization might use to do business or by which the organization may be known in some circles. This additional information would make it easier for researchers and the public to access relevant 990 forms. This improved access, in turn, should help increase transparency while not adding an undue burden on the reporting organization.

Item L: Year of Formation

To ensure comparability across forms, the year-of-formation terminology needs to be more precisely defined. For example, are you looking for:

- Year of incorporation?
- Year the idea for the nonprofit first originated?
- Year in which it began to function informally?
- Year tax exempt status was granted?
- Year of merger or acquisition?

Part I: Summary

Line 1

We suggest adding more space in the place where preparers are asked to write a brief description of their organization's missions.

Line 2

Consider including a clear definition of organizational activity codes. There appears to be no indication in the instruction section that guides the assignment of these activity codes. Ideally these codes would correspond with existing NTEE codes used by the IRS¹. In the e-file version of the form, these codes could be provided in a drop-down menu format.

Lines 17-21

We want to make two points about this material. First, we suggest providing a formula and/or some sort of online training program for calculating the values asked for in lines 17-21. This action would help insure standardization and comparability across the sector.

Second, we wonder whether it is really wise to ask for data about the costs of doing business in ratio form. There seems to be an implicit message here that there is a right ratio for such things as management (administrative) costs. Unfortunately, this sort of thinking does not take into account the possibility that management cost percentages may need to be greater for organizations during growth years; nor does it take into account the type, size, and scope of service of organizations. We endorse the recommendation of other commentators to simply ask only for raw data.

One final comment about this section of the draft form: Executive Directors of nonprofit agencies often do not know how to accurately report their program, management, and fundraising expenses, and there is a built-in incentive for portraying such expenses as being lower than they really are. It would be helpful to include at least some rudimentary instructions about how these expenses should be calculated. Without carefully stipulated standard operating procedures for calculating program, management, and fundraising expenses, the 990 data has limited utility for research purposes. More importantly, the public is likely to draw inappropriate conclusions when they compare the 990 data for different organizations. When this happens, it is likely that diligent organizations that systematically calculate costs may be judged to be less effective than organizations that, either intentionally or out of ignorance, underestimate the costs of doing business.

¹ NTEE (National Taxonomy of Exempt Entities)

Part II: Compensation and Other Financial Arrangement with Officers, Directors, Trustees, Highly Compensated Employees, and Independent Contractors

We suggest providing a clear definition of the word "*former*" in section A.

In addition, we suggest asking all organizations to report the salaries of their top 5 highest paid employees. In other words, eliminate the reporting threshold. The data that will become available by eliminating a reporting threshold will allow researchers to make more nuanced comparisons across the nonprofit sector. Benchmarking capabilities also should be enhanced.

While we recommend eliminating a threshold for reporting the top five salaries, it may be necessary to maintain some sort of threshold requirement for determining who is required—and who is exempt—from filling out schedule J. This threshold requirement could conceivably take into account the size of the organization as well as an individual employee's salary.

Part III: Statements Regarding Governance, Management, and Financial Reporting

Lines 1a & 1b

The information requested for these lines is redundant as the information has already been recorded on the summary page. If one of the goals of the revision project is to minimize burden, this redundancy should be eliminated.

Lines 3-11

The information being requested here is important because it reinforces the need for nonprofit organizations to have policies in place about whistle blower protection, retention/destruction of documents, and conflicts of interest. The section on making an organization's policies and documents available to the public also seems to be a worthwhile addition. At present, however, the wording of this section is confusing. What is the difference between "*website*" and "*other website*"; what does the term *other website* mean? We recommend using the response *website/internet*. Also U.S. mail should be listed in addition to "*office*" and "*other*."

Part IV: Statement of Revenue

Line 1

It seems important to further break down the categories asked about in this line so organizations explicitly distinguish between corporate and individual donors. We also recommend reporting the number of donors per revenue stream. These two recommendations promote the IRS's 990 form revision goals of increased transparency and the promotion of compliance.

Conclusion

We appreciate this opportunity to comment on reporting requirements that have great importance for both nonprofit researchers and the sector as a whole. We commend those involved with drafting the revised document for attempting to balance goals that, at times, conflict. We have attempted to take this need for balance into account as we prepared this document. If you have questions or wish additional information, do not hesitate to contact either or both of the two co-directors of the Caster Family Center for Nonprofit Research at the email addresses listed at the outset of this memo.

From: [Kylman, Joseph](#)
To: [*TE/GE-EO-F990-Revision;](#)
CC:
Subject: Form 990 Comments
Date: Friday, September 14, 2007 9:10:13 PM
Attachments:

Mr. Ron Schultz
Ms. Theresa Pattara
Form 990 Redesign
Internal Revenue Service
Washington, DC

Comments on Form 990

Although I am an auditor for the State of Michigan, Charitable Trust Section, the following comments are mine personally and are not necessarily those of the Michigan Attorney General's office. However, the comments are based on my years of experience in dealing with Form 990 problems and issues.

Group returns

In the Background Paper, the IRS asks, without further comment, whether it should preclude group returns. Presumably, the Service is considering eliminating the group return requirement for organizations with group exemptions. However, it is unclear what would then be required of such organizations.

Currently, the IRS requires that a central organization file its own Form 990 and it may also file a group return that includes its affiliates. If the IRS eliminates the group return filing, I would suggest requiring each affiliate to file its own return, or not file if applicable.

I would not suggest that the central organization consolidate or combine all affiliates into its own Form 990. Generally accepted accounting principles already require consolidated

financial statements. Such consolidated statements can be useful in reviewing an organization's activities. However, separate financial statements or returns for affiliated organizations also can be quite useful in understanding organizations' activities. Why should this alternative not be provided? If a central organization believes that its activities are best presented in consolidated fashion, it can make publicly available its consolidated audit.

The efficiency indicators on the summary page

There is one other indicator that I would encourage the IRS to consider presenting as well. I believe a very helpful indicator for the public would be the ratio of joint costs allocated to program services to total program services. With this ratio, one can tell at a glance how much of an organization's claimed program is actually conducted, or allocated, through a combined solicitation / education campaign.

Instructions for Form 990, General instructions - The revised general instructions eliminate Section E, State Reporting Requirements. While I agree that much of the information may be removable, certain sections should be reinstated. In particular, the section regarding amended returns is critical in reinforcing a states authority to require that a return be completed according to IRS instruction.

Instructions for Form 990, page 27, line 12b, Less Cost of Goods Sold - The instruction provides a blanket statement that all marketing and distribution costs are to be included in column (B), Program Services, of Part V, Statement of Functional Expenses. While this may often be true, I believe that such a blanket statement should not be made so that situations where this activity is not program related may be correctly allocated. I suggest a statement similar to, "Marketing and distribution costs are not included in the costs of good sold but are to be reported in Part V, Statement of Functional Expenses, and allocated according to the nature of the activity."

Instructions for Form 990, page 28, Column (B) - Program Service Expenses - Similar to above, this instruction makes a blanket statement that implies that all expenses of unrelated trade or business activities are to be included in column (B) as program services expenses. It seems that there is something inherently wrong in a blanket statement expressing that expenses of an activity that are unrelated to an organization's exempt purpose are considered as costs directly related to the conduct of that exempt purpose.

The example given notes that publication costs of a magazine are program service even though the sale of advertising is taxable as unrelated business income. In this example, is the IRS saying that any costs related to selling that UBIT advertising should also be allocable to program services?

I suggest wording the instruction to say, "Sometimes expenses of an organization's unrelated trade or business activities may also be included in column (B), program services. For example, publishing a magazine is a program service even though the magazine contains both editorials and articles that further the organization's exempt purposes as well as advertising, the income from which is taxable as unrelated business income. However, costs of the unrelated trade or business activity, such as costs of selling the advertising, should not be included in column (B)."

Instructions for Form 990, page 28, column (B) - Program Services Expenses - The instructions state that costs to secure a grant are to be included in column (B), Program Services. I do not understand why costs of securing grants should be distinguished from other fund raising costs. I suggest removing this statement.

Thank you for your consideration.

Joseph Kylman

Auditor

State of Michigan

Department of Attorney General

Charitable Trust Section

From: [Terry Miller](#)
To: [Pattara Theresa; *TE/GE-EO-F990-Revision;](#)
CC:
Subject: Comments on Revised Form 990
Date: Friday, September 14, 2007 9:33:51 PM
Attachments: [Revised-990-comments-Terry-Miller.pdf](#)

Attached as a PDF and below in the body of this email (identical). I'm sorry to get them in just under the wire rather than well ahead.

#####

Terry Miller

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September 14, 2007

Theresa Pattara

Internal Revenue Service

Via email: _____

& via email: _____

Dear Ms. Pattara and coworkers:

Thank you for the opportunity to comment on the proposed revised Form 990. You have already undertaken a huge amount of work. Reading all the comments, synthesizing them, and figuring out what to do next, promises to be yet more heavy work for all of you. I thank each of you involved for your effort, which I think most of us know is ultimately intended to strengthen the exempt sector.

Who am I? A financial management staffer, consultant, and board member with 30 years of experience in the tax exempt sector. I am most familiar with the needs and problems of small community-based charities and social welfare organizations. I have also worked as a paralegal for one of the premier EO law firms, as a CFO for a business league with an affiliated charity, and actively train and speak on tax compliance and financial management.

I fear that compliance has become difficult for small community based organizations and the message becomes similar to what bankers told family farmers in the 80's: "Get Big or Get Out." Not all work is best done by exempt organization with budgets in the \$5M+ range. It is not just tax law, but ever more complex GAAP, and ancillary rules such as UMIFA/UPMIFA, Sarbanes-Oxley, Charitable Trust regulation such as California's Nonprofit Integrity Act, and election law creeping into issue advocacy such as with the Bipartisan Campaign Reform Act and succeeding litigation.

Before I address specifics, I would like to speak up in support of the notion that using all pre-printed schedules (as forms) rather than leaving it to preparers to read instructions and to format and attach appropriately detailed schedules is a very good idea and will improve the quality of reporting and thereby compliance, as well as advancing transparency.

My largest concern about the revision is not about the compliance burden; rather my top concern is that the new form sets a tone that the sector is out of control. I hope this is not being done to appease Congress, and of all the comments I have to make, this is the single most important one: the overall tone.

Rather than organize my comments in the order of the form and schedules, I organize them from broad general problems to much more specific areas where I predict confusion, and lower reporting accuracy through vagueness or undue complexity. In many cases, I do not prescribe a specific solution, since I realize that you will have many suggestions to study and combine.

I. Key Comment

The proposed form reads as if the sector is out of control rather than broadly compliant with some outlying abuses as the recent compensation study suggested is true. There is a delicate balance between strengthening the sector through encouraging best practices and transparency, and weakening the sector by destroying public confidence. The IRS has a sacred trust, and should really work to get this right or you will inadvertently weaken the sector. This leads directly to my first and most important Key Comment:

It would be better to highlight the reporting entity's accomplishments (and if there aren't any, that will be obvious too).

Program Service Accomplishments should be moved up and highlighted, and functional accounting totals should be moved down and not given such prominence. Charities are best evaluated based on: what was accomplished for how much spent, and how stable is the balance sheet. Functional accounting is too easy to manipulate.

Suggested Page 1 “Dashboard”:

Basic Contact / Identifying Information

Total Raised, Spent & Net Assets by Type

Program Service Accomplishments

Move current Page 1 to Page 2.

II. Second Tier (Broad) Comments

1. Members of the Charitable Class may be properly both Directors and beneficiaries. There is an implication at various points in the form that relationships between insiders and members of the charitable class are a sign of corruption. In social and economic justice work, it is often helpful to seat a number of members of the charitable class on the governing board so that the organization does not lose sight of its mission and values. The core form, and even questions such as Schedule F, Part I, Question 5b imply this is an improper arrangement. The form should be revised to allow a group to illustrate the importance of having members of the charitable class in powerful positions. One group I know of reports: “8 of the 18 board members meet the income criteria to receive [our subsidized/free goods and services] and participate in the self-help [programs] described in program service accomplishments, which redistribute [goods and services] to families earning less than 185% of the poverty level. [XYZ Charity] works hard to ensure that constituents are part of the decision making process at every level.” Not all charities will be able to articulate their reasons this well; IRS should take care not to cast a shadow on the charitable nature of important work for lack of articulate defense.

2. *Income = Support + Revenue.* This form, like the old one, uses “*revenue*” as the overarching term. The distinction between support and revenue is a key issue for public charities and for identifying commerciality issues. Blurring the terms blurs the distinction. In my work, I have found value in keeping the definitions and terms clear on this matter, from the budgeting, through to financial statements and external reporting.

Recommend: change Summary heading on Page 1 to “Income” (from “Revenue”); make similar changes throughout, to set Support apart from Revenue.

Change Core Form Part IV, Page 5, Statement of Revenue Column A heading to “Total Income”, line 1h to “Total Support,” and the description in the left margin for all of Line 1 to say simply “Support.”

Schedule G, Part II, Page 1, Events. The point of Lines 1 and 2 is to distinguish Revenue (earned) from Support (donated). Section (margin label) should be called “Income.” Line 1 should be called “Revenue/Earned Income” and Line 2 should be called “Support/Contributions.”

3. *“CFO” is a title that causes confusion.* In practice, the holder of the title ranges in meaning from a statutory officer in some states to a title used by people to indicate the most senior accounting staffperson with no true authority. Emphasizing it in Core Form Part II will create confusion; “Treasurer” standing alone is more likely to get the information you seek; nobody knows what each other mean by “CFO.”

4. *Governance is a tricky business* that functions under state corporate law and calls for seasoned legal judgment to interpret and apply well. One size does not fit all, contrary to the views of Wise Giving Alliance and other self-appointed watchdogs. One charity may require a board of 15 that meets monthly in order to do a good job, whereas another may do just fine with a three-person board meeting annually. It depends on what the activities are.

For example, Question 4 (and Part III Question 1b) “independent members of the governing board” falls short of rooting out “clubby” board atmospheres and weakness in the fiduciary duty of care. It is difficult to identify cronyism and clubby atmospheres with a simple “independent” test, although the form will imply to the public that more is better on independent directors. IRS should think carefully about the picture any one snapshot paints, since the glare of a publicly available tax form may distort rather than highlight.

5. Compliance would be increased if Conflict of Interest Policies, and relationships among fiduciaries and highly compensated persons in Core Form Part II concerned with the same list of persons so one questionnaire could be used to obtain all necessary information. Compliance and planning can be difficult since a nonprofit may enter the year not realizing that a contractor will go over \$100K and need to be vetted for all the relationships that contractor may have with insiders. This may sound specious, but picture a large community agency such as a united way or a jewish federation in a medium sized city, with a large board, a large number of major donors, and a long list of “alumni” of various sorts. The more we can streamline and simplify the practice of collecting important relationship (potential conflicts of interest) information among fiduciaries and the highly compensated the more likely the reporting will be fully compliant. The more complex it is with separate lists to be vetted against each other, some known prior to the year, some only know after the year, the lower becomes the quality of reporting and the higher the burden.

6. “Related” and “affiliated” mean various things in various places on Form 990. A matrix in the instructions would be helpful to define when each type of relationship triggers reporting considerations.

7. Combining Lobbying and Political Activity on one schedule will cause further confusion. It is difficult to combat the message that “all that political and lobbying stuff is dangerous so you shouldn’t do very much” with the correct message for a charity that “501(h) can be mastered, lobbying within limits is charitable, while electioneering is prohibited.” At the risk of suggesting another schedule, you might separate lobbying from electioneering.

8. Endowments are a very complex area and currently changing; the law varies by state. Core Form Part VII, Page 8, Question 16, about whether the organization holds “term or permanent endowments” is a complex area not well understood. Current endowments with a spending policy approach intended to maintain value over the long term but contemplating short-term dips below historic dollar value, or historic purchasing power, is causing the entire accounting industry to revisit the concept of permanent restrictions. Like governance, characterizing endowments may be outside the IRS’ core competence and may lead charities to answer questions with good intentions that serve to trip them up with donors or the public.

Schedule D, Part XII, Page 3 may also mislead charities.

Many charities think a simple board reserve savings account is an

endowment. IRS is wading into deep water.

9. Maintain the 2006 990 narrowed definition of “related organization” for compensation purposes – Schedule J Instructions requests comments: Relationships types 6 & 8 excluded by, and type 7 triggering reduced reporting under the “Q&A” instruction fix for 2006 were good moves.

III. Third Tier Comments: Specific and Important

1. Need a place like old Line 20 for adjustments to Net Assets such as Unrealized Gains & Losses.

Suggestion: Create equivalent to Line 20 at about Line 20a on Page 1; if not, then at least mention Schedule D Part XIII in Summary section now lines 22-24b on Page 1.

2. “Local chapters, branches or affiliates” is VERY hard to define in actual practice. There are a million and one arrangements that may or may not be captured by the instructions. IRS should carefully review the full range of arrangements in the sector; attorneys can produce a 13-page outline of variables in chapters and affiliations; capturing that will entail complex instructions and may sow confusion.

3. Public Support is listed as an afterthought in Core Form Part IV, Page 5, as “All other contributions, gifts, grants, and similar amounts not included above.” Direct public support is a key index of healthy public charities; listing it as an afterthought is misleading.

4. ‘Policy to Safeguard Exempt Status’ is vague. Core Form Part VII, Page 8, Line 12. Exempt organizations must already be organized for their exempt purposes, so the answer is in some ways “yes, see Articles of Incorporation, which dictates that we are organized and operated exclusively for...”

5. ‘Direct Revenue generated by a Program’ may cause confusion or mislead; it is not restricted; revenues can produce surpluses (or not), they just may not be commercial; it is Support that is sometimes restricted.

Perhaps if I understood the compliance or transparency urgency of reporting revenues by program this would make more sense. First, I find that programs are not so easily separated, and the sector is far from having a convention regarding at what size an entity should start to report more than one program area. Since they are not well defined, it will be very easy to place revenue in whatever context is sought, and may not serve any useful purpose. Core Form Part IX, Page 10, Question 3, Column A will cause a lot of confusion and may not help with transparency.

6. Schedule A, Part I, Line 11h, Supporting Organizations:

a. Column i should accommodate **cases where there is more than one controlling organization** in a class of supported organizations.

b. Column iii should allow for **509(a)(3) organizations that support a 501(c)(4,5 or 6) organization**.

7. Schedule A, Part II, Support Schedule:

a. **Membership Dues should be specified**; I realize the instructions suggest that most charities should report dues paid for public benefit as donated income, but the fact is that they do not. Prior Schedules A rolled memberships into donations, effectively; that needs to be addressed.

b. **There is a substantive change in the support schedule compared to the old form** (Schedule A, Part II, Page 2, Line 14 in not subtracting Line 10 (unrelated revenue which is not taxable due to one or more statutory exclusions and would have been excluded from both the denominator and numerator as part of program service revenue under the old form).

c. What is the purpose of Line 13 **related revenue** not being shown by year so that reporting charities may tie out by year? It is placed in a strange location that will cause conceptual confusion.

8. Recommend maintain Form 8734. The public support schedule is a common source of error. Form 8734 causes charities to focus on the question and retain qualified help at least once in their history, in my experience.

9. Conversion period. I work with two small charities that are having trouble with public support although each well qualifies under the facts and

circumstances test. Now they are having to plan forward for four-year and five-year periods, both cash and accrual, meaning every fundraising effort is now leading to FOUR iterations of a planning spreadsheet. I recommend some sort of conversion period with optional methods so as not to cause unexpected results.

10. Political contribution “Indirect exempt function expenditures” is vague and confusing (Schedule C, Part I-C, Question 3).

11. Fiscal Sponsorships have some attributes in common with Donor Advised Funds. It is unclear how they will answer Schedule D, Part IX.

12. Grants to “indirectly” finance “political or lobbying” activity outside of the U.S. is vague. (Schedule F, Part I, Page 1, Line 3). If anything, move this question to Schedule C.

13. Disposition of more than 25% of assets. Schedule N Part II. This is vague and misleading; many groups raise and then spend nearly all their assets every year.

14. Schedule R, Part V, Lines 1m,n,o,p. This uses “transfer” as a payment for consideration not just for NO consideration. This is a departure in definition from current Schedule A Lines 51 & 52 and will cause confusion with all “for value” transfers appearing to be reportable (charity buys book from business league...).

IV. Fourth Tier Comments: Sources of Potential Confusion = Lack of Compliance

Core Form Part II, Page 2, Column B does not mention President or Chair. “Former ____” is blank (former what?). “Other” is vague.

Core Form Part II, Page 2, Column G, assume should say “by the individual” at the end of the question.

Core Form Part II, Page 3, Section B, question 3 should specify some periodicity or ask the reporting entity to say how regularly the CEO, ED, Treasurer

and CFO compensation includes a review and approval.

Core Form Part III, Page 4, Question 8 should say “certified public accountant” if that is what it means by “independent accountant.” IRS should be mindful of the pressure on small charities; the upshot of much of this is to force small charities and social welfare organizations to get larger. Not all communities are best served by \$5M+ organizations.

Core Form Part III, Page 4, Question 10. Recommend ask if Officers reviewed Form 990 or perhaps if any volunteer officer or director reviewed. It is unrealistic to expect community based board members to review a complex tax report to any substantial extent.

Core Form Part III, Page 4, Question 11. Recommend DROP this question, or narrow it. Financial Statements are not public documents. Audits are not public in all states. IRS is overstepping its authority here. If an organization checks “n/a” or says “we do not” it implies they are improperly run. This is legislative not administrative.

Core Form Part IV, Page 5, Question 2. Business Codes are not often easy to identify for nonprofits. Garbage In Garbage Out.

Core Form Part IX, Page 10, Question 3a. Activity Codes. Same comment.

Core Form Part IV, Page 5, Questions 4&5: Recommend grey shade columns B and C.

Core Form Part V, Page 6, Line 11c: Recommend grey shade Columns B and D.

Core Form Part V, Page 6, Line 11e: Recommend grey shade Columns B and C.

Core Form Part V, Page 6, Line 11d Fees for Service / Lobbying. It is not uncommon to pay a “lobbying” firm to do a variety of work not all of which is lobbying within the meanings of 501(h), or 6033; this line could get various wrong answers as a result. Recommend change to “Lobbyists / Lobbying Firms (for all functions).”

Core Form Part V, Page 6, Line 23. Compliments! Good thing to limit

amount plugged into miscellaneous. Could even lower it below 5%.

Core Form Part VI, Page 7, Line 6. Receivables from 4958 disqualified persons should be *defined in the instructions*; we know from low quality 990's that preparers too rarely read instructions let alone expecting them to read regs.

Core Form part VII, Page 8, Line 1a. Is a research or fact-finding trip outside the U.S. a program service activity? Need to define in instructions.

Reason for Public Charity Status should mention both 509(a)(1) and the relevant 170(b)(1)(A) sections. and

The description for 170(b)(1)(A)(vi) has long caused confusion when inexperienced preparers read it and choose 509(a)(2) in error. Ignorance is no defense, but clearer wording could prevent a lot of preparer errors.

The 509(a)(2) support schedule should be more explicit about Medicaid/Medicare type payments on behalf of many payers for this purpose.

Schedule C beginning section should say, in bold type "Start Here: "What to File?""

Schedule C, Part II-A, Page 2, reversing the order of Columns (a) and (b) will cause confusion.

Schedule C, Part II-B, Page 3, line 2a assumes that the "no substantial part test" is well defined. It is not; case law appears even contradictory. No charity will answer "yes" unless in error or out of naiveté.

Schedule F, Part II, Page 2 (foreign grants). It is important to recognize that some important charitable work involves actual hand-off of cash. Perhaps Column (f) could say "directly to recipient." Column (g) should say "non-cash property" or something like that to avoid technical assistance appearing to be required reporting.

Schedule F, Part II, Page 2, Question 2. Is this asking how many of the foreign grant recipients also hold U.S. IRC 501(c)(3) designation? That will be a very low number and may not be worth asking and/or may create the impression that anything else is improper when in fact it is very rare.

Schedule F, Part III, Page 2, Question 3. The instructions say there is a

\$5K threshold; that should be incorporated into the actual question. Unfortunately, we know preparers do not read all instructions.

Schedule G, Part I, Page 1 Fundraising Activities. This should ask about scale. Most charities will ask someone for a gift by mail, email and phone without engaging in the sorts of mass campaigns of interest to regulators.

Schedule G, Part I, Page 1, Question 1b says “any individual” but in the online training/introduction to the form, IRS said it does not include the Development Director – which contradicts the question on its face. Should clarify.

Schedule G, Part I, Page 1, Question 3 jurisdictions in which organization is “authorized” to solicit funds. Perhaps “registered?” Authorized is not usually used in the context of charitable solicitation registration.

Schedule G, Part III, Page 2, Question 9a. Should this just say “Form W-9”?

Schedule I, multiple pages. We recall from the online training that IRS wants multiple copies of this form rather than attached pages. If so, Part II should be developed like Schedule B to facilitate multiple pages.

Schedule I, Part II, Page 1. Column (a) – aggregate amounts per grantee or each grant? (relevant to \$5K threshold). Column (h) is too narrow for good disclosure.

Schedule J, Heading. The “To be completed by” is very helpful and should be replicated wherever possible in the schedules. Compliments!

Schedule R, Part V, Line 2 should ask the specific non-charitable (tax) status of the other organization.

##

Thank you very much for the opportunity to comment,

<!--[if !vml]-->
<!--[endif]-->

Terry Miller

Terry Miller

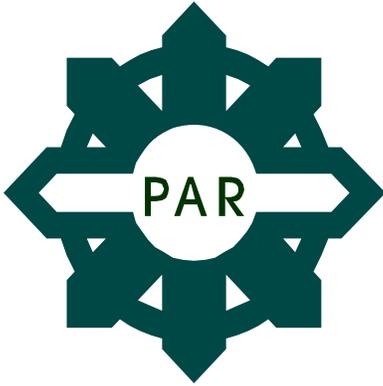
415 824 4705

415 824 4715 fax

From: [Shirley Walker](#)
To: [*TE/GE-EO-F990-Revision;](#)
CC:
Subject: Comments 2007.0915 Draft IRS Form 990
Date: Friday, September 14, 2007 11:55:22 PM
Attachments: [Comments 2007.0915 Draft IRS Form 990.doc](#)
[image001.jpg](#)

Attached are our comments to the draft IRS Form 990. Please contact me at 717-236—2374 if you have any questions. Thank you for your consideration.

Shirley Walker
President and CEO
Pennsylvania Association of Resources
Autism * Intellectual Disabilities
1007 North Front Street
Harrisburg, PA 17102
717.236.2374
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September 10, 2007

Form 990 Redesign
ATTN: SE:T:EO
1111 Constitution Ave., N.W.
Washington, DC 20224

Re: Draft Redesigned Form 990

Lois G. Lerner
Director of the Exempt Organizations Division of the IRS

Ronald J. Schultz
Senior Technical Advisor to the Commissioner of TE/GE

Catherine E. Livingston
Deputy Associate Chief Counsel (Exempt Organizations)

Dear Ms. Lerner, Mr. Schultz, and Ms. Livingston:

Thank you for the opportunity to provide comments on the draft redesigned Form 990. The Pennsylvania Association of Resources for Autism and Intellectual Disabilities (PAR) is a 501(c)(3) nonprofit educational organization that supports over 42,000 individuals with intellectual disabilities as well as over 8,000 people on the autism spectrum who receive community services and supports through our member agencies in over 4,500 locations in the Commonwealth.

PAR supports the principles that guided the IRS's redesign of the Form 990:

- Enhancing transparency to provide the IRS and the public with a realistic picture of the organization;
- Promoting compliance by accurately reflecting the organization's operations so the IRS may efficiently assess the risk of noncompliance; and
- Minimizing the burden on filing organizations.

PAR also agrees that the form is outdated and in need of revisions. We thank the IRS for engaging the public during the redraft of the form and for providing educational training and resources during the public comment period.

Because the Form 990 is such an important compliance tool and critical source of nonprofit data, **PAR strongly urges the IRS to extend the deadline for accepting comments and recommendations and to slow down the fast track this initiative appears to be taking.** Due to the far reaching impact the new form will have on the entire sector, and the urgent need to ensure that it is a workable form that actually carries out its intended purpose, PAR believes an extension of the September 14th deadline is in the best interest of both the IRS and the organizations that will be impacted by the changes.

Recommendation: PAR agrees with many others that the IRS provide a second draft of the revised form and instructions for review and amendment with a one-year delay in the implementation from fiscal year 2008 to fiscal year 2009.

With our overriding recommendation to extend the deadline in mind, please consider the following comments and recommendations. PAR's comments and recommendations outlined below are not all-inclusive and we will have additional comments as we continue to analyze the draft.

General Comment - Fiscal Impact/Administrative Burden

As currently drafted, the form will take an organization much longer to complete. Small 501c3s, which make up a very large percentage of charitable organizations, already have a struggle with limited resources carrying out their missions and need the IRS to work hard to minimize the amount of time it takes to complete the 990. We believe that with additional time given to analyze and comment on and revise the form, our concerns about complexity and time/cost needed to complete the form can be minimize while meeting the goals of the initiative.

Core Form – Part I Summary

Section: Line 2

Discussion: PAR is a member of the Pennsylvania Association of Nonprofit Organizations (PANO), whose national association is the National Council of Nonprofit Associations (NCNA). PAR echoes NCNA's concerns regarding the use of the Nonprofit Taxonomy for Exempt Entities (NTEE) categories that currently exist as opposed to creating new ones for the purposes of filing. The NCNA submitted comments to the IRS on August 31, 2007.

Recommendation: PAR recommends that the IRS adopt NCNA's recommendation, which follows:

In reference to activity codes, the National Center for Charitable Statistics (NCCS) has developed the Nonprofit Program Activity codes, an offshoot of the widely used NTEE system, for classifying programs. (The full list is available at <http://nccsdataweb.urban.org/PubApps/nteeSearch.php?gOry=all-core&codeType=NPC>.) We strongly encourage the IRS to either use these codes or work with NCCS and others to modify them to meet IRS needs. This will both save the IRS time

and money and ensure a system that has been carefully constructed to meet IRS and the nonprofit sector's needs.

Section: Line 3

Discussion: The number of governing board members can change during a reporting year.

Recommendation: Add “at the end of the reporting period.”

Section: Line 8b

Discussion: PAR agrees with NCNA's comments to the IRS regarding this section, and requests that the IRS accept our recommendation, which parallels theirs, which follows:

The computation of compensation for directors and key employees allocated to program expenses as a percentage of total program expenses will provide a misleading picture of the operations of organizations with a limited number of paid staff and of organizations that are primarily service providers for whom personnel costs represent a high percentage of program expenditures. This figure, without further explanation, can be non-informative and subject to serious misinterpretation. We suggest removing this calculation or using total compensation divided by total expenses (column A instead of B).

Recommendation: Use total compensation divided by total expenses instead of expenses as a percentage of total program expenses.

Core Form – Part II Compensation and Other Financial Arrangements with Officers, Directors, Trustees, Key Employees, Highly Compensated Employees, and Independent Contractors

Section: Line 1a

Discussion: PAR does not agree with the Form 990's required disclosure of the city and state of residence for every person listed in Part II, Section A. Because the Form 990 is available to the public, it is important that measures are taken to protect the privacy of those individuals listed in the form.

Recommendation: We recommend that the organization's address continue to be used for this section and that the requirement for individually-identifiable addresses be removed.

Section: Line 1a

Discussion: The required disclosure of the highest paid employees and officers (over \$100,000 which is a change from the old form's threshold of \$50,000) can be misleading without the inclusion of additional information such as the employee's job title and an organization's

revenues. Nonprofit salaries are often misunderstood by the public and legislators and are taken out of context of the person's job title, experience, the organization's size, and what the market is for that job. While we understand the IRS's need to capture this compensation data, it should be evaluated within the proper context.

Recommendation: At a minimum, require job titles and the market along with the names and compensation of the highest compensated employees above \$100,000.

Core Form - Part III Statement Regarding Governance, Management, and Financial Reporting

Section: Lines 3, 4, and 5

Discussion: The draft form asks if an organization has a conflict of interest policy, whistleblower policy and document destruction policy. While all of these are good business practices, and impact nonprofits to some extent per the Sarbanes-Oxley Act, it should be made clear that the IRS does not mandate these policies. It could be interpreted by some organizations that since the IRS is asking for the information, it is also mandated.

Recommendation: In the accompanying instructions to the form, clarify that the IRS does not require organizations to have the policies listed above.

Section: Line 3b

Discussion: This section asks the organization how many transactions it reviewed under its conflict of interest policy (if the organization has one). It is imperative that all of the information gathered in the 990 form is relevant, useful, and meaningful for organizations and the entities responsible for oversight of those organizations. It is not clear to us how the responses to this question would be of any value. We join with the NCNA in recommending that this question be eliminated.

Recommendation: Delete this question.

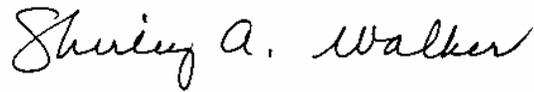
Section: Line 10

Discussion: This section asks the organization if its governing body (i.e. Board of Directors) reviewed the Form 990 before it was filed. As your department knows, there are deadlines and penalties associated with a late filing. Requiring the entire governing body to review the Form 990 prior to submission is not practical and would create an unnecessary burden on the organization and the person/organization preparing the form. It is not always the normal practice for an organization's governing body to review the Form 990 before it is filed, nor should it be necessary, as long as the Board's directions are followed and they are apprised of the organization's finances and reporting activities, which compliant Board's are through Annual Reports and financials throughout the year. It is not clear if the question implies a mandate; we assume it does not, but that must be clarified for this question and several others.

Recommendation: Delete this question.

Thank you for considering our comments and recommendations. PAR is committed to accountability and transparency within the nonprofit sector, and commends the IRS for working to advance these goals. We hope comments from our sector will aid in your efforts to achieve these goals in a rational, cost-effective, and efficient manner.

Sincerely,



Shirley A. Walker
President and CEO

From: [Eckels, Dan](#)
To: [*TE/GE-EO-F990-Revision;](#)
CC:
Subject: 990 Revision Comments.doc
Date: Saturday, September 15, 2007 12:45:47 AM
Attachments: [990 Revision Comments.doc](#)

Please consider these comments in redrafting Form 990.

September 14, 2007

To: IRS _____

From: Dan Eckels

Comments on Draft Redesigned Form 990

The following comments are made for your consideration in the redesign of Form 990.

The revised Part I schedule line 8a requests officer and director compensation. Line 8b develops a percentage of this compensation by dividing compensation by program services. This is misleading as certain officers spend the majority of their time managing infrastructure that allows the organization to function, e.g. CFO and CIO oversee many management and general expenses. Please change line 8b to divide by total expense on line 20.

A useful addition to Part I would be summary community benefits.

I have always found Schedule B to cumbersome and a little confusing, e.g. type of contribution: person. One almost has to print all pages of the schedule and lay certain ones side by side. This is not conducive to viewing on-line.

Schedule H Community Benefits line 3 allows for the inclusion of unreimbursed cost of “other” government programs. Some of these programs reimburse at the same rate as Medicare, so why would losses on Medicare not be allowable on this schedule?

Schedule H Part II Lines 3 and 4 are confusing. What is the value of reporting fees collected vs. net expected? The difference is in A/R. Just request net expected and reduce the time burden to complete the form.

Schedule H Part II line 5 should be clarified. A better question might be “How do you determine that a patient account should be dropped to collections?”

Schedule H Part IV line 3 asks for a description of the organization’s emergency room policies. This question is vague and needs clarification.

Schedule J Supplemental Compensation Information is an improvement on the current form, but does not remedy the double reporting of compensation, i.e. reporting earned income from prior years paid in the current year along with current year deferred earnings. This treatment truly confuses reporting to the unknowledgeable reader. I would propose reporting deferred income, but not including it in column F totals.

Thank you for your consideration.